United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

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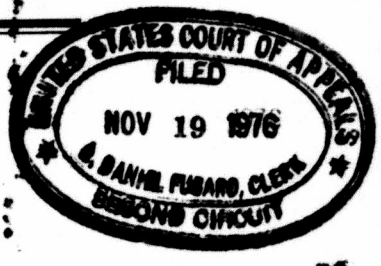

United States Court of Appeals
FOR THE SECOND CIRCUIT

BIG SEVEN MUSIC CORP. and ADAM VIII, LTD.,
Plaintiffs-Appellants,

against

JOHN LENNON, APPLE RECORDS, INC., HAROLD SEIDER, CAPITOL RECORDS, INC. and EMI RECORDS LIMITED,
Defendants-Appellees,

and

MORRIS LEVY,
Additional Defendant on Counterclaim-Appellant.

B P/S

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AFTERNOON SESSION

1:45 p.m.

THE COURT: Who do we have now?

MR. SCHURTMAN: May we continue with Mr. Kives at this point, because his plane leaves first.

THE COURT: Okay.

MR. SCHURTMAN: Your Honor, before I question Mr. Kives, I request permission to make a very brief statement.

During the luncheon recess the defendants' counsel wanted to question Mr. Kives. Mr. Kives requested that I be present and I requested permission to be present during the questioning.

Defendants' counsel absolutely refused and said I had no right to be there.

Since your Honor wasn't available I had no choice but to let them question Mr. Kives alone.

I have since looked at the rule that defendants' counsel referred to this morning and I would simply like the record to show that rule (4) (a) 1 of the Rules of Civil Procedures does not give them any of the rights they just demanded and attained.

THE COURT: What do you mean, rights demanded and attained?

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MR. BERGEN: Your Honor, I would like to just state personally --

THE COURT: Please. Let's not have everybody jumping in. I am questioning Mr. Schurtman.

MR. SCHURTMAN: They told your Honor that they wanted to question Mr. Kives because if we had told them in advance that he was an expert they would have had the right to take his deposition.

In the first place, the rules don't give them the right to take the deposition. In the second place, even if they had the right to take a deposition, I would have had the right to be present.

Now, I am not making an issue of it at this point.

THE COURT: Let's not get into all that.

MR. SCHURTMAN: I will drop the issue. I just want the record to show what has happened.

MR. PRETTYMAN: I think I am entitled to reply since he has put it on the record.

Your Honor, what happened was that we said in view of the fact that Mr. Schurtman was not representing the witness, that he was being called as an expert, and that they had interrogated him when we were not present, we would appreciate the opportunity of talking to him without their

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presence.

We asked whether the gentleman would refuse to talk to us without Mr. Schurtman's presence and we were told no, that he merely preferred it, and we confirmed that with him when we talked to him.

He did not demand that Mr. Schurtman be present but merely said that he wished everybody was altogether.

When we said that we preferred to talk to him alone since they had, we thereupon talked to him alone.

That's all there was to it.

THE COURT: I think we just have to go on with the testimony. Let's go.

MR. BERGEN: Your Honor, may I just say something about Mr. Graham. He has to get a 6 o'clock plane to go back to Urbana, Illinois.

THE COURT: We will work everybody in.

MR. BERGEN: Thank you.

xx R A Y M O N D K I V E S, resumed.

xx DIRECT EXAMINATION

BY MR. SCHURTMAN: (Continued)

Q Mr. Kives, I will try to pick up where we left off.

I think you testified that you had an annual sales volume, your company, K-Tell had an annual sales

volume of $87 million.

A Our last fiscal year we did $87 million.

Q My next question is of that $87,000,000, how much represents record albums and tapes promoted over television?

A I would say about 65 percent.

Q Do you know whether K-Tell is the largest company in the TV mail order field?

THE COURT: I tell you, you are going to have to really begin cutting this case down.

It doesn't make the slighest difference whether they are the largest.

Let's get right to the point.

I will assume he is in a business, you know, and if it does 65 percent of 87 million, that's enough. Let's go.

Q Do you know Mr. Morris Levy?

A Yes.

Q How long have you known Mr. Levy?

A Since the ummer of '68.

Q Have you had any business dealings with Mr. Levy?

A Yes.

Q What has been the nature of these dealings?

A He packaged our initial records that K-Tel or its predecessor companies put out.

Q Which of his companies packaged them?

THE COURT: What difference does it make? Let's get to the point. What is the point?

Q Can you tell the Court how many copies of the various packages were sold that Mr. Levy packages for you?

THE COURT: What difference does that make?

MR. SCHURTMAN: It has a bearing on our projections of damages in this case, your Honor.

THE COURT: All right.

A Most of his packages sold in the area of a million to a million and a half units.

Q How long does a television promotion of a record album normally last?

A In the area of approximately three months.

Q When you put a package together for a TV album, do you obtain licenses or leases of masters from other companies?

A Presently I do.

Q Are all of these deals in writing?

A Eventually they are put down to writing.

Q Do you ever follow the practice of making an oral agreement and starting to perform under it before it is put

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into writing?

A Yes.

Q Is that the practice in your industry?

A Initially you have an oral agreement and then you put it into writing.

Q What is the time gap between the oral agreement and the written agreement in the type of situation you just described?

A That would be anywhere from one to six months.

Q Have you ever paid any substantial sums of money in the form of advances to anyone without having a written contract?

A Yes.

Q Have you used masters of other companies without having a written contract?

A Yes.

Q Is that the practice in your industry?

A To use -- yes, I would say.

Q Have you ever made any such oral deals with Mr. Levy or his companies?

A Well, basically you would ask for masters and you could use the masters and you put the thing to writing one or two months afterwards.

THE COURT: After what?

THE WITNESS: After the package is released, after the record is --

THE COURT: And that is usually what happens? You say it is usual?

THE WITNESS: In our industry, probably at least a month after the contracts are usually finalized. But there is an oral agreement.

Q Have you ever made any oral agreements for publishing rates?

A Yes.

THE COURT: Let me make it clear. Are you telling me that it is usual in your industry not to put the contract in writing until a month or so after the record is released? Is that what you are saying?

THE WITNESS: I am saying that -- when you are getting individual masters most times you do not have a written contract finalized until anywhere from a month to two months after the package is completed.

THE COURT: All right. Give me a minute to get it.

MR. PRETTYMAN: How many months was that?

THE WITNESS: One to two months.

THE COURT: Read the answer again, Mr. Reporter, please.

(Answer read.)

Q Just to be clear on that, Mr. Kives, before the written contract is finalized and signed are albums released and sold to the public?

A In mixed albums, yes.

THE COURT: In what?

THE WITNESS: In like multi--in compilation albums, containing 20 or more individual masters, like not the same artist.

THE COURT: Go ahead.

MR. PRETTYMAN: May I have an objection on the grounds of relevancy in view of that last answer, your Honor?

THE COURT: That is what I was going to ask him about. I won't sustain the objection, but --

MR. SCHURTMAN: I will withdraw the last question, your Honor.

THE COURT: Look, what I think everybody is aware of is that you have been -- you seem to be careful to be limited your testimony to a situation where you obtain a bunch of masters to put on one of these TV promotion records, right?

THE WITNESS: Correct.

THE COURT: Do you know whether this would apply, this practice would apply to a record made by an individual

performer, such as John Lennon.

THE WITNESS: I don't feel that this would apply to that situation.

Q Have you ever been involved in a situation with a performer like John Lennon?

A No, not of his caliber.

Q What types of situations -- spell it out a little more clearly, so the record is clear -- what types of situations do you make oral deals in where the paper work follows later, if you can describe it very briefly.

A Mainly in situations where there are multi-packages, where there is multi songs, like 20 individual songs.

Q And do you deal with different companies to obtain the masters?

A Yes.

Q And they send you the master tapes before a written agreement has been signed?

A Yes.

Q And do you send them advances before a written agreement has been signed?

MR. PRETTYMAN: Your Honor, I am going to object again. I don't know what relevance this has. That isn't this situation.

THE COURT: I don't know why we have to get into a lot of detail.

MR. PRETTYMAN: He is distinguishing the present case from something else.

MR. SCHURTMAN: I don't know if that is a valid distinction. All I want is the facts on the record. We will argue the significance of the facts at a later point.

MR. PRETTYMAN: He made the distinction.

THE COURT: Please, let's not have a lot of colloquy. I do not see any need to get into a lot of detail about how he does the business with -- what do you call it-- the multi?

THE WITNESS: The multi-package, the multi-compilation packages.

THE COURT: The multi-compilation packages.

THE WITNESS: Where you would have 20 individual artists on one LP.

THE COURT: Are these situations where these artists have recorded some time ago and the recordings have been sold in the normal channels sometime ago.

THE WITNESS: Correct.

THE COURT: And they are no longer active in those normal channels?

THE WITNESS: Well, they could -- they are still

active in the normal channels?

THE COURT: But these came out sometime ago, right?

THE WITNESS: Yes. No, there are also some tracks we get that are still fairly current.

THE COURT: And you take those very songs as originally recorded and you put them on a new compilation, right?

THE WITNESS: Right.

THE COURT: And you don't have anybody, any artist coming in, like John Lennon, and rerecording those old songs?

THE WITNESS: No, not for the current packages. For older hits we have rerecorded, records that -- where the artist is no longer with the label. We have had like a record where -- we just rerecorded like Webb Pierce, his oldest hits, where he is no longer on the label. But those songs are usually about ten years old.

But songs that are within one or two years, we are using the original masters by the original artist.

THE COURT: Those you gather together?

THE WITNESS: From the various companies.

THE COURT: And that is the situation where this practice you described obtains, right?

THE WITNESS: Right, where I would get oral commitments followed by written commitments several months after the package is released.

BY MR. SCHURTMAN:

Q One last question on that point. Where you get these oral commitments and you pay advances on the strength of the oral commitments, how high have these advances been?

MR. PRETTYMAN: Your Honor, I am sorry. I am going to have to object.

THE COURT: Let me hear the question.

(Question read.)

THE COURT: I will overrule the objection.

A That various according to the --

THE COURT: Give us --

A Well, the highest I paid was $50,000 for a single song for the world, for an Elton John cut, for the world use. That could be on packages throughout the world.

pm

Q Now, moving to a different subject, when K-Tel leases maters from other companies, do these other companies furnish it with 7-1/2 inch per second tape or with 15-inch per second tapes or any other speed?

MR. PRETTYMAN: May I object in view of the fact that no foundation has been laid for this particular piece of information and he has not been submitted for this purpose?

THE COURT: Overruled.

Do you understand the question? What speed tapes?

A We have gotten them in both speeds.

Q What do you mean?

THE WITNESS: Some companies furnish us with 7-1/2 and some furnish us with 15.

Q Do you remember any of the companies who have furnished you with 7-1/2?

A I really don't get involved with that.

Q Do you recall an album that was packaged for you by one of Mr. Levy's companies entitled 20 Power Hits?

A Yes.

Q How many copies of that album were sold?

A In the area of a million.

Q How many?

A Approximately a million units.

Q Did you receive any unusual number of complaints about the quality of that album?

A No.

Q Have you received any unusual number of complaints concerning any albums made with 7-1/2 ips tapes?

A I would not know.

Q If K-Tell were to handle an album which John Lennon recorded 15 or 16 rock and roll hits expressly for TV promotion and it was agreed that this album would sell at a price of $4.98 per album and $5.98 per tape, per 8-track tape, can you on the basis of your experience in the industry give us an estimate of how many albums and tapes could have been sold in the United States by TV promotion?

MR. PRETTYMAN: Objection.

MR. BERGEN: Objection.

THE COURT: Overruled.

A Anywhere from a half million to close to 2 million units.

Q That would be in the United States?

A Yes.

Q How about abroad?

THE COURT: I am sorry. What did you say in

the United States?

THE WITNESS: Between a half million and close to two million.

THE COURT: Now abroad.

THE WITNESS: I would double it. I would say anywhere from a million to 4 million units.

MR. PRETTYMAN: May we have a continuing objection so I don't have to keep getting up?

THE COURT: Yes.

Q Would the number of sales vary depending on whether Mr. Lennon personally appeared in the television commercial advertising the album?

A Yes.

Q In what manner would it vary?

A If he would self-endorse the product it would add at least an additional 35 percent. We have had several packages that have been self-endorsed, like Eddie Arnold, Mary Robbins, Pat Boone, and we have had substantially greater sales from those albums.

THE COURT: The 35 percent added would be added to what? The 1 million or the 4 million?

THE WITNESS: Both.

THE COURT: The other figures were without his own endorsement on TV?

THE WITNESS: Yes, but basically using his picture. It would be using his picture and a picture of his group.

MR.SCHURTMAN: Your witness.

CROSS EXAMINATION

BY MR. PRETTYMAN:

Q My name is Barrett Prettyman. I represent Capitol Records and EMI Records. Do I understand that K-Tel has never released an entirely new product, that is, an album that was entirely new and had not come out before?

A Yes.

Q If Mr. Levy were to come to you and to tell you that he had a deal with Mr. Lennon to put out an album and wanted you to participate with it in some fashion in tems of packaging and distribution through the way you normally operate, would you enter into any oral deal with him for that package?

A No.

THE COURT: Will you read the answer?

(Answer read.)

MR. SCHURTMAN: What are the terms of this hypothetical deal?

THE COURT: It is Mr. Prettyman's question. The witness seems to understand it. If you want redirect --

MR. SCHURTMAN: I object to the question because it speaks of a deal without giving any terms.

THE COURT: I overrule it. Go ahead.

Q As a matter of fact, sir, did not Mr. Levy call you at one point in connection with an album dealing with Mr. Lennon?

A I don't know if he called me or I spoke to him, but I spoke to him one time.

Q Did it have to do with sales of this potential album in Canada?

A I spoke to him on the phone and I asked him whether I could get the rights for this package.

Q Did you say anything to him, Mr. Kives, as to whether you believe or did not believe if he could get such a deal from Mr. Lennon?

A Basically I said if he had this package I would like it for Canada.

Q And did you not say anything to him to the effect that you could not believe that he had such a deal with Mr. Leonnon?

A I think I said I was very impressed that he did have this package.

Q My question was, did you not say something to him to the effect that you could not believe he had gotten such

a deal with Mr. Lennon?

A I really don't know the exact words I used, but basically I was very impressed that he had John Lennon for a record package.

Q If, in fact, something had been able to have been worked out between you, would you have required some kind of assurance over and above his word that he did, in fact, have Mr. Lennon under contract for that production?

A I would have asked him to give me some written assurance.

Q In the contracts in which you enter into or you say you enter into oral contracts, are not those contracts where the other person is relying upon your integrity rather than your relying on the other person's integrity?

MR.SCHURTMAN: I object to the question. I don't know what it means.

THE COURT: If he understands it.

Can you answer that?

THE WITNESS: I am not 100 percent certain of what he is asking

Q You described some limited situations in which you enter into an oral agreement with somebody and then some time thereafter the paper work follows?

A Yes.

Q Now, are those deals such that the nature of the agreement is that the person with him you enter into the agreement is relying upon you to pay and perform as opposed to the other way around?

A Yes.

THE COURT: You mentioned in response to some questions of mine that there were situations where you might have a package in which there was a very old song, ten years or so old, and that you would have some artist re-record it?

THE WITNESS: Correct.

THE COURT: There, I guess, you would have to getthe rights to the song from the owner of the rights?

THE WITNESS: No. Most contracts when an artist is under license to a record company, he can't re-record a song. Assume he makes a song, a hit, he can't re-record a song for a period of five to ten years. After that period is over he has a right to record his song for another record company. This generally goes not happen, but ti does happen in certain situations.

THE COURT: In other words, the situations you are describing now are situations where you know that an artist is free of the old contract and he is free to re-record for you?

THE WITNESS: Correct.

BY MR. PRETTYMAN:

Q So that if we pin that down, if we have a major artist and he is under exclusive contract with the company, during the period of exclusivity you would not be able to put out a package of his songs, certainly, without agreement of his company? Is that correct?

A Absolutely.

Q And, as a matter of fact, you do not put out those tapes of packages of major artists, do you, where he is still under exclusive contract with the company?

A Generally I don't.

Q Now, after this contract comes to an end, however, and he is no longer under contract for that company, then after a period of time you are free to enter into an agreement to put out a package of his songs?

A Yes.

Q Normally, as I understand it, those would be the same songs that he had put out in prior years and you would be putting out a new package of those?

A Correct.

Q But what you are saying is that in a few instances he will re-record the same song that he had

recorded before?

A With the new record company.

Q But you have not had an instance where he would re-record entirely new songs that he has not put out before?

A No.

Q Would you tell us, sir, what is the normal period of time between the time that a particular song by a particular artist is popular and the time thatyou put out that same song by that artist as part of one of your TV packages?

A I try to get the song as quickly as possible, and if I can get it while it is going up the charts I would and the record company is prepared to give it to me I would take it.

Q Is the Poppy family -- have I said that correctly --

A Yes.

Q Is that the one that you got about as quickly as any other?

A For a complete album from one artist, yes.

Q How longwas that after the time that that was popular?

A Well, four or five years.

Q And, in fact, do you often get these compiliations of songs some ten years after they have been popular?

A It depends on the type of package I am putting out.

Q My question is, do you sometimes get those compiliations as late as ten years after the songs had been out?

A Yes.

Q Now, is it true that when these compiliations, these albums are sold through a retail fulfillment center, that some people buy those packages because they are directed to the store by the television ad, and that others buy them because they come in off the street and see them on the shelves?

A Most of them see them because they are directed to the store by the ad.

Q Is it still true that perhaps as many as 20 percent buy them because they see them on the shelves?

A Anywhere, I will say, from 10 to 15 percent by seeing them on the shelves.

Q You have not made a study of that?

A No.

Q If Adam VIII were to put out an album over television and through retail fulfillment centers

and a request for that song came in, let's say, some two years later, would you normally expect that that order would be filled?

A I don't know how Adam VIII runs their business.

Q Well, based on your general understanding in the industry -- I am sorry. May I retract that --

Did K-Tel normally after its initial selling period is over retain a certain number of albums in its warehouse in order to fill later orders?

A Generally. We do not make it a policy.

Q Sometimes you do and sometimes you don't?

A Yes.

Q In those cases where you did keep albums in your warehouse, I take it you would be fulfilling orders as long as they came in and you still had the albums left?

A Yes.

Q What is the normal period of these contracts you enter into? Is it three to five years? Is that the normal period?

A Generally, if it is a compilation or a mixed album, it is the number of uses you have for the song and the period of time is really usually from one to three to four years.

Q When you say number of uses, you mean it can

run its course and over another period you can have another use?

A Yes,if you have two uses, you can use it on one special album and thenyou can use it on another mixture of different hits.

THE COURT: I don't understand. In other words, these contracts provide a specific number of uses?

A Some of the contracts.

THE COURT:Do you they provide for periods of time also?

THE WITNESS: Usually they do. Usually you will have two uses over a period of two years or three years. Some are one year.

THE COURT: In other words, are they usually more than a year?

THE WITNESS: Most of the contracts are approximately for two years. Some are from one to two years. But they usually specify the number of uses, rather than the term. You can use it for one record or you can use it for two records.

Q And the number of uses would normally be spelled out?

A Right.

MR. PRETTYMAN: I have no further questions.

CROSS EXAMINATION

BY MR. BERGEN:

Q Mr. Kives, my name is James Bergen, and I represent John Lennon and Harold Seider.

Now, is the bulk of K-Tel's business retail fulfillment center sales?

A Yes.

Q How much of the revenues that you have testified to of K-Tel's is from TV mail order?

A A very small portion.

Q Your estimates of the amount of albums thatwould have been sold of this John Lennon package is strictly retail fulfillment center?

A Yes.

Q Do you have any idea how many you could sell through mail order?

A Well, I know that mail order packages, they had an Elvis Presly package that did over a million mail order in the United States.

Q Do you know how long that Elvis Presly package was sold for through mail order?

A It was less than a year.

THE COURT: In other words, the estimates you

gave earlier are strictly on the idea of retail fulfillment?

THE WITNESS: Correct.

Q K-Tel has practically no business in mail order, TV mail order?

A Negligible.

Q Now, when you talk about this re-recording of old songs, who owns the new master, the new recording?

A K-Tel.

Q That is pursuant to a written agreement?

A Yes.

Q Can you tell us the basis upon which you came up with these figures of 500,000 to a million?

A Basically I have been in the business for eight years and I run many packages. It is really a gut feeling. But I have great respect for John Lennon and I feel that those are the figures that would sell.

Q Don't you deal basically -- when I say "you," K-Tel -- deal basically with proven hits?

A Yes.

Q Prior to these licenses being entered into, do you make written felicitations to the various record companies with respect to these masters?

A Most of my felicitations are done by telephone.

Q Is there usually any paper work at all in front

of the final product, the final package?

A Well, sometimes we would use telegrams or telexes.

Q No. On the usual license for masters, is there a sell-off provision after the period of the license?

A Yes.

Q How long is the sell-off provision?

A It is usually six months after the license expires.

Q Is there usually an auditing provision in these contracts?

A Yes.

Q How long does that last?

A I would say the term of the contract.

MR. BERGEN: I have no further questions.

CROSS EXAMINATION

BY MR. GRUMBACH:

Q My name is George Grumbach, and I represent Apple Records, sir.

Didn't you just tell us before in our interview that auditing can go on for an unlimited period after the expiration of the contract?

A Well, with our company we don't really mind. If you want to pay the audit bills, you are entitled to audit.

Q In your experience, then, the right to audit could continue indefinitely after the expiration of the contract? Is that correct?

A I really have not been in business that long. We have really not undergone that many audits.

Q Is it the case that the auditing terms of a contract are sometimes included and sometimes not?

A Yes.

Q If you have an important contract that you want to get, you will then yield on an auditing provision?

A Yes.

Q You mentioned advances in your prior testimony. Is it normal to give the company or the artist that gives you a master an advance?

A It depends on the nature of the artist and the nature of the song. WE have given advances, substantial advances for more current products, and I have given advances when it is somebody delivering a complete package.

Q Let us just take this case. Assuming you were having a deal with John Lennon, would you assume to give an advance?

A Yes.

Q Now, you testified that as to sell-off provisions when the contract expired, as you say, in the

sense that the normal term is over, then comes the sell-off period, that begins to run after that; isn't that correct?

A In a contract, yes.

Q So, in other words, if you are testifying as to a two-year contract with a six-month sell-off provision, you would have two years and six months of that contract?

A Yes.

Q When you talk about sell-off provisions, tell me who you sell off to?

A Well, I sell off to retail outlets, like to Woolworths, Thrifty, or we would sell to other distributors.

Q Now, some of those people that you sell to known in the industry as rack jobbers?

A Yes.

Q Could I go into a record store, for example, and buy one of these albums for $1.98 that had originally sold for $4.98?

A Yes.

Q Would it have a hole punched in it?

A Usually it will.

Q You testified about contracts which did not have a term, such as one year, plus the six-month sell-off, two years, but, instead, the contract said you have one use

or two uses of this album, of this master? Is that correct? You said there was some contract said that instead of specifying a term in a calendar fashion, would just specify one or two uses?

A Correct.

Q If there was nothing in this contract that said anything about one year, two years, three years, but it just said you may use this master on one album that you have put out, would you understand that contract to mean that you at your own option would have the right to sell this album as long as you wished?

A Could you repeat the question?

(Question read.)

A If the other 19 or so songs had the same provision, I would assume yes. But this is very unlikely.

MR. GRUMBACH: No further questions.

REDIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Kives, how long is one use normally?

A It's usually the life of the package that the song is put on and it would probably be three to four months.

Q Three to four months.

So if you speak of a single use, the entire thing would be over in three or four months?

A Usually.

Q And if you want to make it more than one use that would be specified, that it must be more than one use?

A That's correct.

Q You testified about an Elvis Presley album which sold over a million copies.

Was that through retail fulfillment centers or by mail order TV?

A By mail order TV, the United States.

Q Did Elvis Presley personally appear in the commercials?

A No.

Q So it was not a self-endorsed album?

A No.

Q Which type of sale in your experience is more

successful, by mail order or by retail fulfillment centers?

A Retail fulfillment centers.

Q Why is that?

A A lot of people just don't want to take the effort of writing and sending a check and writing a letter.

Q Do you know of any combined mail order and retail fulfillment center campaigns, where both are done simultaneously?

A It is -- there aren't too many done simultaneously, but there are many done where they will use mail order and then they will do retail once they have proven a package is successful. But there are some that have been done simultaneously.

Q Can they vary from one section of the country to the counter?

A Yes.

Q Use mail order in one section and retail fulfillment in another section?

A Yes.

Q You were questioned about a hypothetical situation of a deal with Mr. Lennon.

Were you asked whether you would give him an advance in such a deal?

If I suggest to you a situation where Mr. Lennon

has breached a prior agreement with you and you take the position that he owes you several hundred thousand dollars and you then make a deal to cure the settlement by making a package for him, would you necessarily pay him in advance on top of that?

A No.

MR. PRETTYMAN: Objection, your Honor.

MR. BERGEN: Objection, your Honor.

MR. SCHURTMAN: What is the objection?

THE COURT: I will overrule that.

A If I felt he owed me some money I would not pay him.

MR. SCHURTMAN: I have no further questions.

THE COURT: All right. You may step down. Thank you very much.

(Witness excused.)

THE COURT: Are there any further questions for--

MR. SCHURTMAN: Yes.

I would like to continue with Mr. Graham.

THE COURT: All right.

xx M I C H A E L H. G R A H A M, resumed.

xx CROSS EXAMINATION

CONTINUED BY MR. SCHURTMAN:

Q Mr. Gram, just before we broke for lunch you

testified that you regarded the fact that the song Ya Ya had been recorded twice by Mr. Lennon as compliance with the October 1973 settlement agreement, is that correct?

A Yes.

Q According to Plaintiffs' Exhibit 11, which is the transcript of the settlement conference before Judge Griesa, on page 2 you made the following statement to the Court, and I quote:

"John Lennon agrees to record three songs belonging to Big Seven Publishers on his next album. The songs which John Lennon intends to record at this time are You Can't Catch Me, Angel Baby and Ya Ya. John Lennon reserves the right to alter the last two songs, that is, Angel Baby and Ya Ya, to any other songs belonging to Big Seven, but will in all events record You Can't Catch Me."

Is it your testimony that this was intended to mean that the song Ya Ya could simply be recorded twice?

A I was not intended at the time, but I think it fits, yes.

Q It was not intended at the time to mean that?

A I had no idea he would record the song twice, no.

Q Wasn't the intention that three separate songs would be recorded?

jhe 5

THE COURT: I didn't understand you to say that you could comply with that agreement by recording the same song three times. That isn't what you said this morning, is it?

THE WITNESS: No, your Honor. He had to record You Can't Catch Me.

THE COURT: Then he had to record two other different songs, right?

THE WITNESS: He had to record two selections to give Mr. Levy his mechanical royalty. That's the way I understood it, that he needed to be --

THE COURT: Could he just record You Can't Catch Me and then record Ya Ya twice? Would that be --

THE WITNESS: It would have gotten Mr. Levy his mechanical and satisfied the agreement.

THE COURT: You know, I think this is a completely profitless guest. There might be questions of the interpretation of the settlement agreement. It is background. I don't know that there is any scientific measure about how far we go into it, but my insting here is -- you know, this is not particularly productive.

MR. SCHURTMAN: Your Honor, I raise it only because for the first time I heard the theory this morning that a double recording of Ya Ya is sufficient.

THE COURT: It is of no real concern to me now.

MR. SCHURTMAN: Fine.

Q The second part of the settlement agreement required that certain things be done prior to December 31, 1974, did it not?

A Yes.

Q And were those things done prior to December 31, 1974?

A Yes.

Q In what manner?

A There was a letter sent to Big Seven in effect stating the songs available for license from the Apple non-Beatle catalogue.

Q What was the date of that letter?

A December 31, 1974. That's what you showed me this morning.

Q Right.

So the letter wasn't delivered until after December 31.

A I don't know whether it was mailed or hand delivered. I don't know.

Q But in any event, it did not actually license these songs, did it, it simply offered to license them?

A I believe that that is what it says.

Q So isn't it correct that at least technically the second part of the settlement agreement was not performed prior to December 31?

A I would say it is not correct, that that was substantial compliance.

Q You say it was substantial compliance? All right.

Can you describe the circumstances under which it was decided on the last day of the year to send that letter?

A Yes, that on December 29 the Beatles' settlement agreement was approved by the Court in England, which gave the authorization for that letter to be sent.

Before that it was not possible to state to Mr. Levy that Apple had agreed to this license.

Q Did anyone send a telegram or cable or letter memorandum stating "We can now comply with the second part of the Levy settlement."

A Send it to who?

A Internally. Did you receive anything from anyone?

A I believe I received -- specifically not to that question.

I received notification of court approval in England of the settlement.

THE COURT: Approval was December 29.

THE WITNESS: I believe -- yes.

Q My question is whether you know whether there was any specific communication internally in your organization or organizations saying "Let's go ahead and comply with the second part of the Levy settlement."

A The only communication was my telephone call to Mr. Dolgenos.

Q Which was when?

A It was before the end of the year.

Q What did you tell Mr. Dolgenos at that point?

A I told him that we got the authorization, we got to get this information over to Mr. Levy, because we can license the songs to him.

Q At that point did you say anything to Mr. Dolgenos about the meeting you and Mr. Seider had had in November with Mr. Levy?

A No.

Q Had you ever told Mr. Dolgenos about it?

A Yes.

Q When did you tell Mr. Dolgenos about it?

A I would have told him something -- I told him something about it the morning after the meeting when we went to his office and there was the message for Harold

Seider from Mr. Levy that he had called and there was a telephone call from Mr. Levy for Mr. Seider. I know we said something about the meeting that night, but I don't recall what it is I told him, and I wasn't very extensive.

Q Was that the only time you told him about that meeting?

A Yes.

Q I show you Plaintiffs' Exhibit 31, which is a letter dated January 9 from Mr. Levy to Mr. Dolgenos.

Have you ever seen the original or a copy of this before?

A Yes, I have.

Q When did you see it for the first time?

A I don't know. I don't know.

Q Did Mr. Dolgenos call you when he received that letter and tell you that he had just received a response to the December 31 letter that you and he had discussed?

A No, it wouldn't have come up that way. I saw certain papers involving this litigation at some time after the case started, but I don't know when it is I saw this, but I have seen it before.

Q When was the first time that you learned that Mr. Levy or Adam VIII or Big Seven claimed that they had an agreement with Mr. Lennon to put out a TV album?

A Sometime in -- I think sometime in January 1974.

Q When in January?

'74? You mean '75?

A Excuse me. '75.

Q When in January 1975.

A I don't know. I know I was called and I was told that there was a lawsuit and that John and Harold were both defendants.

Q This was after the lawsuit was started?

A Yes, and I may have seen this letter before the lawsuit was started, but I don't believe I wasin New York between the end -- the last period of December and in January and I wouldn't have seen it until I was back again or it was mailed to me after the litigation started.

Q Were you in New York between December 29 and December 31?

A No.

Q You discussed that with Mr. Dolgenos on the telephone?

A Yes. I went back to Illinois before that.

Q At the time you told Mr. Dolgenos to make this offer to Mr. Levy -- I am talking of the December 31 offer to license certain masters -- did you tell Mr. Dolgenos to let you know what Mr. Levy's response would be?

MR. BERGEN: I object to the form of the question. I don't think there is any testimony about an offer, your Honor.

THE COURT: Let me hear the question.

(Question read.)

THE COURT: Objection overruled.

A I don't tell Mr. Dolgenos. I asked him -- remind him to do this and I asked him to notify Mr. Levy and I did not ask him to tell me what the response was.

Q During the November 18, 1974 meeting at the Cavallero between you and Mr. Levy and Mr. Seider and partly with Mr. Kahl --

A Yes.

Q -- was there any discussion at that time about compliance with the October 1973 settlement agreement?

A No.

Q The subject never came up during the meeting?

A Never came up.

Q Did Mr. Levy ask why you were attending that meeting?

A No.

Q Did you tell him?

A No.

Q Why were you attending that particular meeting?

A Because I am a consultant to Mr. Lennon, I was in New York at the time, and Mr. Seider asked me to come.

Q Were you consulting on the sale of the non-Beatle inventory?

A On that -- I was representing Apple in connection with that, yes.

Q And is that the reason you attended the meeting?

A That is one of the reasons.

Q What was the other reason?

A Mr. Seider asked me to go.

Q Did Mr. Seider tell you why he wanted you there?

A He only told me what we were going to talk about.

Q What did he tell you you were going to talk about?

A Mr. Levy wanted the information on the non-Beatle inventory and Let It Be and we were going to discuss with him a TV package.

Q Before the meeting what did Mr. Seider tell you about the TV package?

A He had told me that -- at that particular moment, nothing. He had told me before that that he and John had talked to Morris and that John was interested in the concept and that if it was going to proceed John would have to

decide and they would have to work something out with EMI.

THE COURT: We have had that testimony at least three times.

We are just going on and on.

Did you ever take Mr. Graham's deposition?

MR. SCHURTMAN: No.

THE COURT: This is like a deposition. Discovery should have been over by the time we got to trial.

Q During that discussion on November 18 did Mr. Levy say anything about notifying Capitol Records of the fact that a Lennon album was coming out?

A No, not that I remember.

Q There was no discussion about any notification to Capitol?

A No. The discussion was to get ahold of EMI.

Q Did Capitol come up at all in the discussion?

THE COURT: Does it make a difference?

MR. SCHURTMAN: Yes, it does make a difference, Judge.

THE COURT: All right. Why didn't you get a deposition? You are conducting discovery in this courtroom and I cannot take the time to do that.

MR. SCHURTMAN: Your Honor, I am conducting cross examination. I did not know it was my obligation --

THE COURT: You have nothing to base your cross on except just fishing around, hoping. You don't know what--

MR. SCHURTMAN: I know what I am driving at.

THE COURT: All right.

You know, you can't go on forever on this.

MR. SCHURTMAN: Your Honor, I have been cross examining this witness for about 20 minutes.

THE COURT: I don't care how long it is. It's more than 20 minutes and it is simply a groping, which you should avoid.

Twenty minutes is a very precious amount of time.

Now, let's bring it to a conclusion. Really, we are not getting anywhere with this cross examination.

MR. SCHURTMAN: I think I am.

A Capitol came up in connection with who would probably press the album when we were talking about the 40 cent pressing cost and the 15 cent jacket and collating, that possibly Capitol could do it.

THE COURT: Whis is also what he said before.

Q Either during the November 18 meeting or at any time prior to that did you receive any information that Mr. Lennon had rehearsed the album at Mr. Levy's farm?

A No.

Q Did you receive any information that Mr. Lennon

had conducted recording sessions in New York in October?

THE COURT: Look, this man was out at a University in Illinois. Right?

THE WITNESS: Yes, sir.

THE COURT: You were not following this day-to-day.

What in Heavens name difference does it make whether he was informed of the rehearsals at the farm in Ghent or not?

Now, let's conclude this. I am going to direct you to conclude this in five minutes and no more, in less than five minutes, if you can possibly do it.

Q Prior to testifying today, did you read Mr. Seider's deposition?

A I have -- I read a digest of Mr. Seider's deposition I would say it's about six to eight weeks ago. I did not read anything --

THE COURT: Did you read his testimony or his deposition?

THE WITNESS: I read a digest of his deposition.

THE COURT: All right. That's the answer.

Next question.

Q Did you read Mr. Levy's testimony?

A I skimmed, I believe, a digest of his.

Q The sheet of figures that you reconstructed, did you in fact give that to Mr. Seider at the time?

A Yes.

Q Was there ever any further discussion about these figures?

A No.

Q Did you or anyone in your presence ever tell Mr. Levy that a deal with Lennon was impossible or could not be done?

A No.

Q Did you participate in the decision to have Capitol Records come out with the Lennon album?

A No.

Q Did you participate in the decision to have Capitol Records send telegrams to Adam VIII suppliers and TV stations?

A No, I did not.

Q When did you first become aware that this had been done?

A When I received certain -- I think I was told that it had been -- if it had been done, that some telegrams had been sent, and I received certain papers in this litigation sometime after the complaint was filed.

Q What papers?

A The complaint and I think some -- whatever was annexed to it.

Q Have you participated with the defendants' attorneys in the preparation of this case for trial?

A No, I have not.

MR. SCHURTMAN: Your Honor, pursuant to your direction not to continue with the cross examination, I will stop at this point.

THE COURT: Fine.

MR. SCHURTMAN: I am not finished.

THE COURT: All right, that's fine. You had three more minutes, but it is up to you. What else?

Any further questions?

MR. PRETTYMAN: I have about four or five.

THE COURT: All right.

xx CROSS EXAMINATION

BY MR. PRETTYMAN:

Q Mr. Graham, during your testimony you referred to a particular period of time when you said that the normal selling price for albums sold through normal retail was $6.98 and then you said something about although the album before that was $5.98.

Do you recall what album that was?

A I believe the Mind Games album had come out at

$5.98 and Walls and Bridges was $6.98.

MR. SCHURTMAN: I object to that as improper redirect. It was not covered on my cross examination.

THE COURT: Sustained.

Q Did Mr. Levy say --

THE COURT: Wait a minute. You haven't examined this witness at all.

MR. PRETTYMAN: No.

THE COURT: All right. I don't think you are limited by that. What was the question and answer?

MR. PRETTYMAN: I think he answered. I think he said it was Mind Games that came out at $5.98 but that Walls and Bridges came out at $6.98.

THE WITNESS: I believe thatto be right. Yes.

Q Did Mr. Levy say anything at the November 18 or 19 meeting that would indicate that he thought that EMI's approval was not necessary before he could distribute or sell this album?

A No.

Q As a matter of fact, did his constant references to Mr. Seider seeing Mr. Wood-- were they interpreted by you as an admission that he did need EMI's consent?

MR. SCHURTMAN: Objection.

THE COURT: Sustained.

Q Did you personally inform anyone at Capitol or EMI about this meeting on November 18 and 19 prior to the institution of this lawsuit?

A No.

Q And did you talk to anybody at Capitol or EMI, informing them about any of these discussions that you had had about the possibility of Mr. Seider seeing EMI or anything of that sort?

A No.

MR. PRETTYMAN: That is all I have. Thank you.

THE COURT: All right.

MR. GRUMBACH: I have two questions.

THE COURT: All right.

xx CROSS EXAMINATION

BY MR. GRUMBACH:

Q Mr. Graham, if you put you Ya Ya on Walls and Bridges and then you put it out again on another album does the copyright owner of Ya Ya get royalties for each sale of each album with respect to that selection?

A Yes.

Q At the time of the October '73 settlement you will recall that in the settlement documents it is stated that Mr. Lennon is either to use his best efforts to get Apple Records, which I believe you said was the California

company, to license three non-Beatle masters to Big Seven or, at Mr. Lennon's election, to record himself two more of Mr. Levy's or his company's copyrighted songs, is that correct?

A Except I believe it is Apple Corps Limited. Other than that, yes.

Q The purport of my question is this:

Did you at any time in conversation with Mr. Levey or his attorneys or anyone else representing him, explain why the settlement was phrased in terms of Mr. Lennon using his best efforts to get Apple to license these selections.

MR. SCHURTMAN: Objection on the grounds it is parol evidence.

THE COURT: Sustained.

MR. GRUMBACH: Your Honor, if I may suggest the reason for this, I think it is important to my client, Apple. I am trying to show, your Honor, and I don't want to do it in the presence of the witness if you prefer me not to --

THE COURT: Let me see the agreement, please. You are talking about Exhibit what?

MR. GRUMBACH: There are two. It is the transcript and the later letter.

THE COURT: All right. 11 and 12.

MR. GRUMBACH: For example, on 12, your Honor, at the bottom of the first page it says that Lennon has agreed, at his discretion, to perform either of the following, and then subparagraph (a) is to use his best efforts to cause the appropriate Apple company to license, and then (b) says if the appropriate Apple company for any reason does not license the three songs, then Mr. Lennon is to persue the other alternative.

THE COURT: All right.

I will allow the question.

MR. GRUMBACH: Thank you.

Q Mr. Graham, did you ever explain to Mr. Levy or any representative of Mr. Levy why the option and the best efforts language was used in negotiating this settlement?

MR. SCHURTMAN: May I have a continuing objection, sir.

THE COURT: Overruled.

A I may -- initially I had a conversation with Mr. Seider when I was in California and he called on this to make sure that Mr. Leve understood that we can't deliver Apple non-Beatles without the consent of the others.

Q Without the consent of who others?

A The three --

THE COURT: If he is going to simply testify he may have done something --

THE WITNESS: No. I told that to Mr. Seider very clearly on the telephone -- this was in California -- to make sure that they understood that there is an alternative and the reason for it is we can't deliver the Apple non-Beatle.

THE COURT: The question was did you explain to Mr. Levy the reason for couching the second phase of the settlement in the way it was couched.

THE WITNESS: I never spoke with Mr. Levy between that period and when the settlement was done here. I might -- your Honor, I don't remember whether --

THE COURT: Just give us your memory.

Don't give us speculation.

THE WITNESS: I may have explained it to Mr. Krasilovsky off the record here, but I don't remember.

Q Mr. Krasilovsky was Mr. Levy's counsel.

THE COURT: You are confusing me a great deal.

THE WITNESS: Sorry.

THE COURT: Did you tell Mr. Levy at any point about the reason for the particular method of handling the second phase of the settlement agreement?

THE WITNESS: NO.

THE COURT: All right. That's the answer.

MR. GRUMBACH: Your Honor, I had asked whether he spoke to any of Mr. Levy's representatives as well.

THE COURT: Then ask that.

MR. GRUMBACH: Yes, sir.

Q Did you speak to any of his representatives, including his attorney at that time, Mr. Krasilovsky?

A Mr. Krasilovsky was here and present for the stipulation on the record and in the discussions before that off the record I believe I explained to him why. He was not fully aware of the settlement terms, only apparently having spoken with Mr. Levy quickly to confirm its existence.

Q And what is your best recollection of what you told Mr. Krasilovsky, if anything, about the reason why the settlement was couched in terms of best efforts rather than, for example, Mr. Lennon promising that Apple would deliver these non-Beatle licenses?

MR. SCHURTMAN: I object, your Honor.

THE COURT: Overruled.

A I said that Mr. Lennon -- that John can't deliver non-Beatle masters without the consent of the other three Beatles.

MR. GRUMBACH: Thank you.

I have no further questions.

MR. SCHURTMAN: I have one question.

THE COURT: All right, one more.

xx RECROSS EXAMINATION

BY MR. SCHURTMAN:

Q You testified that Mr. Levy or Big Seven would have received the same royalties on the second recording of Ya Ya as on the first recording.

A That's my understanding, yes.

Q What about performance royalties?

Would those have been duplicated, too?

A You only get paid once if it plays once.

Q If Ya Ya were performed once what would happen with respect to sheet music sales of Ya Ya?

A I don't know.

Q When a song is recorded by an artist like John Lennon and released by John Lennon does that in your experience induce other artists to release the same song?

A I don't have sufficient experience to answer that question. I don't know.

MR. SCHURTMAN: No further questions.

THE COURT: All right. Thank you, Mr. Graham.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Now, do we resume with Mr. Lennon?

MR. BERGEN: Yes, your Honor.

J O H N L E N N O N, resumed.

DIRECT EXAMINATION

BY MR. BERGEN (Continued):

Q Mr. Lennon, did Capitol pay the recording companies for the October 1974 sessions for the rock and roll album?

A Yes, I suppose so.

Q Is there any standard or usual time in terms of length for a song?

A No. It depends on who wants to do what. I mean, Bob Dylan made a song the whole length of one side of an album. You can make a song any length you want. It depends on who composed it.

Q Are some of the songs on the rock and roll album less than two minutes?

A I think there is Rip It Up and Ready Teddy, which is made into a medley, I mean, they are stuck together like it's one song. It only lasts about one and a half minutes. In the fifties they used to make very short records.

Q Are you familiar with a song called Her Majesty?

A It's a Beatle song from one of their albums.

Q Do you know what album that is from?

A No. The White album possibly.

Q Do you know how long that song is?

A No.

Q At the October 8 meeting was there any discussion about retail fulfillment centers?

A I never heard of that expression until their lawyers asked me about it at the deposition.

I never heard it in me life.

Q Do you recall whether you were working on the rock and roll album after the 7-1/2 tape was given to Mr. Levy?

A Well, I never stop working on the thing until it goes out. I mean, I work on it at home --

MR. SCHURTMAN: Objection on grounds of repetition, your Honor. This was covered in the other session, the work that he did.

THE COURT: I think that was something that was left open at the close of yesterday's session.

MR. BERGEN: I think that is where we stopped.

THE COURT: Certainly I wasn't clear. We had the description of the recording, then we had the description of that work that was done on February 4 and 5, or about, and then we were going to try to explore what may have happened in between.

MR. BERGEN: I think we kind of jumped ahead to February.

THE COURT: Fine.

A In those breaks I take in between physically being in the record studio, I have rather sophisticated equipment at home, which I take sometimes 7-1/2's, sometimes 15's, nearly always cassettes, of whatever the current state of the album is, and I won't listen to it for a few days, then I will stick it on either a cassette or a large reel-- I have a big Sony machine which is pretty professional--

MR. SCHURTMAN: Your Honor, I object at this point. The witness originally told us what his general practice is at the beginning of his testimony.

Now, I thought we were dealing with this specific album and he is giving us his general practice again.

THE WITNESS: Well, I did it on this album, too.

THE COURT: Overruled.

THE WITNESS: Sorry.

A I did it on this album. In fact, I have even had -- I can't be specific as to which period, but I did have the engineer, Jimmy Iovine, working in the house once trying to make me an edit because I couldn't wait until the

next time we get to the studio to see what it's like.

What I will do is I will play the things and I will think about them. Sometimes I will play it and just listen to the whole thing without making any comment to anybody, but I am listening in my head, you know, maybe I can do this, maybe I can do that.

THE COURT: I am going to ask you this: At this time what we are talking about is the period November, December, January of '74-'75, right?

THE WITNESS: This is in between finishing the recording and the mixing and going into the cutting room.

THE COURT: Right.

THE WITNESS: That perios is a period when I will be -- well, the only place I will probably listen to the stuff is at home, meaning listen to it on a cassette and decide if the order is correct. I know the details of the music, so I can just listen casually to it.

Maybe once a week I will listen just to see how I react to the music.

THE COURT: Were you working on any other projects at this time?

THE WITNESS: No, I only had this one thing to finish.

Q Can you tell us what you mean by you had this

one -- I am sorry. I didn't hear your Honor's question.

You were talking about other projects?

A Yes. I mean, I might have had other songs in my head. I mean, it's hard to say when I stop work and when I don't. I mean, even sitting in this courtroom I might start thinking of music to write or some lyrics.

But basically I was working on that album and even though I try and get away from the stuff before the final push, the final mastering of it, I can't help playing it every other day or so to see if it inspires me or if I get the answer to a problem I might have.

Q Was there one particular change that you anticipated making to the two-track mix prior to the time that you finished that mix?

A Well, I tried to explain it yesterday, what I call the Spector cut on You Can't Catch Me. His edit of You Can't Catch Me was -- I can't think of the expression, but I knew and Jim Iovin, the young engineer, knew from the West Coast onwards that when we finally got to finish You Can't Catch Me we were going to do Spector's edit on it.

Q Can you describe again what a Spector edit is?

A Spector's edit was an ingenious way of catching the beginning of a song, which was a special sound of drums and my voice, going back to the beginning of the song, and it is something that you do on tape because you have not got the musicians there. One could record the whole thing again, but that cost money and it never sounds the same, anyway.

So halfway through the Spector version of You Can't Catch Me on the night we made the record, Spector made a rough mix, which I also had delivered to me on the East Coast, in which he copied the intro, the introduction to the song, and repeated it halfway through the song. In fact, I used the technique when I was recording Do You Want To Dance, only I didn't do it on tape, I recorded it that way.

MR. SCHURTMAN: I object to this entire line of questioning and testimony on the grounds that the defendants' amended joint statement of facts disputed and facts not disputed the following appears, paragraph 76: After the take was sent to Levy -- and the reference is to the 7-1/2 ips tape -- Lennon listened to the tape himself on one occasion in mid-December 1974. See paragraph 117.

And then if you turn to paragraph 117, it says on February 4 and 5, 1975, Lennon supervised the final cutting. According to this undisputed statement of facts nothing happened between the delivery of the tape and the cutting in February except that Mr. Lennon listened on one occasion. I object to any inconsistent testimony.

MR. BERGEN: Mr. Lennon is talking about that he knew he was going to do to the song You Can'tCatch Me after Mr. Spector did something in October or November of 1973.

THE COURT: Mr. Schurtman's objection is to the whole line of testimony about the work done by Mr. Lennon between mid-November, 1974 and February 4, 1975 or thereabouts.

Right, Mr. Schurtman?

MR. SCHURTMAN: That is correct.

THE COURT: And he is saying that prior to the time this litigation came to trial the lawyers for the defense admitted a statement conceding that the only work done by Mr. Lennon during this time was listening once to the tape in December, and then you had the final work on February 4-5, which we heard about.

Is that your position?

MR. SCHURTMAN: Yes.

MR. BERGEN: Mr. Lennon is not testifying now when he talks about this Spector edit.

THE COURT: You are not listening to what I say Mr. Bergen. We resumed with Mr. Lennon this afternoon. He has been telling us in one way or another about another stopping working, and he said he worked at home, that he had an engineer. We are not just talking about the contemplated work, about the Spector cut. If the defense lawyers have taken a position that they are bound to adhere to, that is what you need to explain to me.

MR. BERGEN: I will explain it very simply. I was not aware when we amended the statement of facts that Mr. Lennon had listened to this album at home. It is very simple. I did not become aware of this until last night or yesterday afternoon on the way home from court. And if I have to make a motion to amend the statement of facts on that point, I so move. I don't see how the plaintiffs are prejudiced.

THE COURT: Can I see that document? I don't see what you are talking about. What is the paragraph?

MR. SCHURTMAN: I thought it was 74.

THE COURT: Or page 15?

MR.SCHURTMAN: May I see it again. I am sorry. 76.

THE COURT: Let me say this: It sounds to me even from what I heard today that as to any work that was done after mid-November,1974, the most important work was that which was done at this February 4-5 occasion, cutting the master and so forth.

THE WITNESS: That would be the accumulation of what solutions to whatever problems I had, I would have thought it out at home.

THE COURT: In order for me to appreciate whether the evidence should come in or not, I got to understand the issues.

Now, as I understand it, the contention of Mr. Levy is that the 7-1/2 inch tape which was given to him in mid-November, 1974, was, as far as he understood, Lennon's finished product which Mr. Levy could simply go forward and make and cut a master from.

Isn't that the plaintiffs' position?

MR. SCHURTMAN: Yes.

THE COURT: Now, the position of the defense is that the 7-1/2 inch tape was made from another tape which was not the final product.

MR. BERGEN: That is correct, your Honor.

It was a copy of a 15.

THE COURT: That 15 had a lot more work done to it before Mr. Lennon was satisfied to put anything on the final record.

MR. BERGEN: That is precisely the point.

THE COURT: I have got to tell you I enjoy hearing all this narrative, but I don't think it makes the slightest bit of difference whether there was work done. It may make a difference to Mr. Lennon, but for my purposes it does not make a lot of difference whether there was work done at his home listening and relistening and relistening, because whether he did it at one time, on February 4th or whether he did it gradually, if his testimony is correct, it was not finished. I think we got a lot of problems in the case. This is not one of them.

MR. BERGEN: The Spector edit?

I think I kind of got lost yesterday at the tail end.

THE COURT: That was something that was done on the February 4-5 session.

THE WITNESS: The Spector edit was done in California by Phil Spector, but just as a rough guide. He intended to do it at the end had he gone on with the album. So when they delivered the tapes to me, in California Spector made a specific edit on the track.

On the night when You Can't Catch Me was recorded in 1973 Phil Spector made a specific cut or edit on the track. He made a rough mix, which is often the case, just for reference.

And he made an edit to show what he was intending to do with the song. And I remembered it clearly, because it was brilliant, and I decided to use it when I got the tapes back from Spector. And his rough cut was sent with the rest of the tapes. And so I could just give it to the engineer and say, "We are going to do it at the end, just listen to Spector's cut. I could call in and they could do it without me. The cut was already on the tape. And it was never done until the last minute. There was no point in doing it. The engineer and I both knew we would do it in the master room or before.

MR. SCHURTMAN: Your Honor, I am just as fascinated as you are by Mr. Lennon's narrative, but I don't think it is proper evidence.

THE COURT: I spent some time making a speech two minutes. I am going to reverse myself. I have not read Judge Mac Mahon's orders and directives which resulted in the statement that you read from, Mr. Schurtman, and I am not going to take the time to do that. I will assume that these defendants' lawyers were under the obligation

to put down their exceptions in that document. Although I have not read Judge Mac Mahon's orders, on the other hand, in turning over in my mind in the last few seconds what I am going to need to know in deciding this case, I think that I am going to need to know as complete a narrative as possible as to what the different actors did that related to this suit during this crucial period of the fall of 1974 and the first month or so of 1975, and I can well imagine getting to thepoint where I am supposed to be deciding this case, and I got quite a big gap and I don't understand what Mr. Lennon was doing and I don't understand why the delay and a lot of things. I will do the same for both sides.

When it comes to your direct testimony about these events, I am going to be liberal in receiving evidence. I am not going to be too sticky about the problem we have now, because I have to understand.

MR. BERGEN: I think I can go through it very quickly.

THE COURT: The question I would have, Mr. Bergen, I am interested as I sit here thinking about it, knowing what in reasonable detail Mr. Lennon was doing about this record during that time. And I am interested in knowing, for instance, from his standpoint why there

would be this length of time required to complete the record. Was he waiting for some decision on a contract? Was he needing from an artisitic standpoint something to complete the record? That is all necessary to make this thing hang together for me. So you may pursue that harder.

BY MR. BERGEN:

Q Continue, Mr. Lennon. You are saying you had planned a early as 1973 when Mr. Spector --

THE COURT: I think I have got that.

Q So that the version of You Can't Catch Me that was on the tape copy given to Mr. Levy did not have what you have characterized as the Spector edit?

A No, we did not bother.

Q The reason you did not is because you were goin to do that at the end when you finished the album?

A It was an easy job.

Q In the latter part of November, 1974, can you recall what you were doing and not particularly with respect to the album but what you personally were doing?

A Not particularly. Was I waiting for Julian to come?

Q Do you recall that you appeared with Elton John?

A Is that what happened? Oh, yes. Well, I had promised Elton John that if a record I made with him got to No. 1 I would appear on a stage with him, and it happened to get to No. 1. So I was obliged to go on stagewith him, and I went to Boston to see what he did on the stage. And I was hanging around with Elton John, and then Paul McCartney came to town, and I was hanging around with him. And George Harrison came to town, and I went to see him. A lot of people came to town who I was visiting and they were visiting me.

Q Do you recall when you appeared with Elton John?

A It was Thanksgiving day.

Q Thanksgiving night?

A Yes.

Q Where was that concern?

A Here. Madison Square Garden.

Q Was there a reason why you went up to Boston to see Mr. Elton John's concert there?

A I wanted to see what he did, and I had not been on stage for a long time. I wanted to know what the game was. I had forgotten.

Q How long had it been since you had appeared on stage

A About three, four years.

THE COURT: You said Mr. Mc Cartney came to town. Do you recall when that was?

THE WITNESS: No. Around about the same period.

THE COURT: You mean Mc Cartney came to Boston?

THE WITNESS: No, he came to New York. I just went to Boston for a night and came back with the airplane that Elton John was on.

MR. SCHURTMAN: I am going to object on the grounds of relevance.

THE COURT: Overruled.

Q Did you spend some time with Mr. Mc Cartney when he was in New York?

A Yes. I always do. We go to dinner and we talk.

Q You said after that George Harrison came to New York?

A George Harrison was on tour, as well as Elton John, and he came in after Elton John. There was some pseculation as to whether I was supposed to go on the stage with him, because I went on stage with Elton John. It got complicated. I went to see at the Coliseum. It had to do with the Beatle settlement coming to a head.

George was supposed to stay and make this settlement.

Q You mean the Beatles were to get together in New York to sign the final papers?

A Yes.

Q Were the Beatle papers finally signed in New York?

A Well, everybody signed them but me, because I was not there for the final meeting. I ended up in Florida, in Disneyland.

THE COURT: When we started in today you were telling me what you did from an artistic standpoint on the rock and roll album during this time. Then we got into something else. I wish you would go back, and even though it repeats, I would like to get this clearly in my mind. This goes away back, my question. You did the recording October 21 through 25?

THE WITNESS: Yes.

THE COURT: Let's forget now whether this was before you gave the 7-1/2 tape to Mr. Levy or not. You just tell me as best you can the course of your work in sequence from that time until the time of the final cutting in early February.

THE WITNESS: Well, I followed my usual procedure, which is to take copies home with me on the album

I am working on, and I have one version on a large tape recorder coming through, I have another version on a cassette, like a radio, equivalent to being on radio, and sometimes I even have a rough acetate, a rough lacquer, and I thought of sneak up on myself and pace around the house, and I pretend I am not doing anything about it, and I will suddenly switch it on to see how it sounds at 7 in the morning, and sometimes on earphones. All the time I am deciding, is this the right order for the songs, and it becomes more apparent the more you play it which are the weaker tracks. Can you do anything about them? Can you edit them? Can you drop them? And all those decisions are made.

And I just generally do it on my own. I just play the tracks every day or every other day and try to listen to them indifferent states of mind. My friend, Tony King, came to New York. I played the tracks for him to see his reaction, what did he think of this track, what did he think of that track, and I get friends' reactions.

THE COURT: Going back before that, after you completed the recording on about the 25th, the initial recording, and then those musicians went off home --

THE WITNESS: Then I over-dubbed.

THE COURT: You did some overdubbing of other instruments?

THE WITNESS: Saxophones and trumpets.

THE COURT: Can you tell me how long that would have taken to complete the over-dubbing?

THE WITNESS: As a guess, I think it would take me at least one track a night. I can only guess. It would be on the paper, how long I was in the studio. Maybe five or six nights with the saxophone players. The booking of the time would be on record.

THE COURT: You finished the initial recording about the 25th?

THE WITNESS: Yes.

THE COURT: Would you have left things rest a little bit while you listened and while you decided what over-dubbing you wanted to do?

THE WITNESS: Yes, I would give it a couple of days, at least, and then decide what to do.

THE COURT: Then you would have to call in the musicians and get them set on what they are going to play?

THE WITNESS: I generally call one who I know personally and get him to arrange to make up a team for a horn section. There is one designated leader.

THE COURT: Now, about how long would it take to call in the musicians, decide what they are going to play, and have them do their over-dubbing?

THE WITNESS: Well, in this case I did about two tracks a night over-dubbing. So there were six tracks. It wouldtake me about five days all together to get them finished, because I like to double practice. I make them play everything twice.

THE COURT: Would you have finished your over-dubbing at the end of a couple of weeks?

THE WITNESS: About five days.

THE COURT: It would be just another week?

THE WITNESS: Yes.

THE COURT: Now, after the over-dubbing what was the next step you did on this record?

THE WITNESS: Then the next step in the studio would be re-mixing them, re-mixing the whole thing together, the horns and the rhythm section and the voice, all down to the two track.

THE COURT: What is your best memory or estimate about how long that took after you finished the over-dubbing?

THE WITNESS: The mixing could take longer. I usually reckon on getting one re-mix a night. If you are

lucky, you can get two.

THE COURT: Just give me your best memory or estimate as to how long that took.

THE WITNESS: However many new tracks there were. I would roughly guess one a night to re-mix it.

THE COURT: Did you take a break or a rest between the over-dubbing and the re-mixing?

THE WITNESS: I can't remember.

THE COURT: What is your best estimate or memory as to when you finished the re-mixing? About how many weeks or days after over-dubbing?

THE WITNESS: We must have been getting into November, early November, probably too late for Christmas. So it must have been early in November, unless there was something I have forgotten about.

THE COURT: Early November you finished the remixing?

THE WITNESS: Probably finished the remixing.

THE COURT: After that you had the 15 IPS tape, right?

THE WITNESS: Yes.

THE COURT: Is that the time when you would start the process of listening at home and so forth that you have described?

THE WITNESS: Even while I'm doing the other stuff, every night I took home a cassette of each version. I would have cassettes before the horns are on, I would have cassettes of when they put the horns on that night. So all the time I take it home.

And sometimes I go home and listen to it again or I listen to it the first thing in the morning when my head is clear, so it never stops, that process.

THE COURT: What is the normal time or is there a normal time in your work, the work that you do, between the time you get the remixing finished down to the first 15 inch tape and the time you are cutting your lacquer master?

THE WITNESS: That would depend on when the record company wanted it or when I wanted it put out or when they wanted it put out.

They have to make a date of when it is going out. They have to put it on their schedule or whatever, and they say, "Okay, cut the parts now," and we go in and cut it.

THE COURT: In other words, that isn't a matter of your artistic need so much as just the scheduling of the record company?

THE WITNESS: No. There is no point in my making the thing and they don't want it yet, you know.

THE COURT: But you are telling me that during that wait, whatever it is, you keep this process of listening and thinking about it?

THE WITNESS: Yes, yes.

I listen to it less at the end of the remix, because by then you are really getting choked with it, so I will space it out, leave three days, try and leave a week without listening if I have the time. I will try to get away from it.

THE COURT: I think I get the picture.

MR. BERGEN: Your Honor, I didn't want to interrupt, but I do have a group of documents from the Record Plant that really show, you know, what happened right from --

THE COURT: All right. You can have those marked and see if they can be admitted. This is the time to do it.

MR. BERGEN: I will wait just a couple of minutes.

Q Mr. Lennon, do you recall at some point in December going into the Record Plant and listening to a tape of the album?

A One long session of listening, play back.

Q Yes.

A I think I did that just before I took Julian to Florida.

Q Do you recall when Julian arrived in the United States?

A Sometime in December, I think.

Q Was it prior to Christmas?

A Oh, yes.

Q I show you a document, Mr. Lennon, that has been marked as Defendant's Dexhibit RRR (handing).

MR. SCHURTMAN: Your Honor, could you ask the defendants to give us a list of their exhibits?

We still haven't received it.

THE COURT: Yes. You should give them a list of your exhibits.

MR. BERGEN: I gave him all these documents last night, your Honor.

MR. SCHURTMAN: I haven't seen a list of your exhibits, sir.

A Yes. What is it?

Q Do you recognize that document?

A No, I never see these things.

No, I don't.

Q Do you recall when you went to Florida?

A Well, sometime in December, just about before Christmas, which is the 25th, so that must have been early 20's, I reckon.

Q Do you recall how long you were in Florida?

A About a week. Five days to a week.

Q Do you recall when Julian returned to England?

A No, I don't. It must have been in time to go to school in the new year, I guess.

Q Can you describe to the Court as best you can remember. what work you did on the album when you went into the master cutting room on February 4th?

A Well --?

THE COURT: You know, didn't we, in fact, have that?

MR. BERGEN: Maybe I can ask him a couple of specific questions, your Honor.

THE COURT: Why don't you do that.

MR. BERGEN: I think he generally covered what he did.

Q Do you recall, Mr. Lennon, anything specifically

you did to any songs, any of the songs?

A We cut -- I cut some either instrumental or some verses out of Do You Want To Dance, as far as I remember, because everything was a bit long and I was trimming off the fades of things, which I often do. I try to grab a few seconds from each song.

I remember specifically just the Do You Want To Dance.

We probably did the You Can't Catch Me that day.

We tried to do some on Angel Baby, like pull out a verse or something or one of the choruses and we chopped Be My Baby in half.

We might have done that the day before.

We might have been doing it both, you see. You see, I mean, just because I have gone upstairs does not make me change what I am thinking, we just move from one room to the other but we are still working all the time.

Q When you talk about going upstairs --

A I mean to the master cutting room.

Q The master cutting room is right upstairs?

A Yes.

Q From the Record Plant?

A Actually on the same floor, but I recall it

upstairs because there are two floors of the Record Plant, so the room is just around the corner. You can be working in either room.

Q Can you tell us what the reason was you were working on Angel Baby and kind of editing it?

A Even though it was -- it sounded attrocious, I still liked the song and I was trying to get the album down to roughly 20 minutes a side, which is what I normally do, you know.

Anything over 20 minutes I don't like. I think the quality is no good.

So I was trying to eliminate the worse bits of everything so as I could have 20 minutes a side. But there was no way I could do it. It kept going into 24, 25 minutes a side.

I was chopping lumps out of these songs to try to pull it all down to try to get it under 20 minutes or around 20 minutes, 21, but no way I could get them down that size without pulling tracks completely off the album, so I finally gave up and took the weakest tracks off, or what I felt was the weakest tracks.

Q What were those tracks?

A Angel Baby and Be My Baby.

Q Do you recall having a conversation with Mr.

Seider about these two tracks and whether they should be on the album.

A Yes. I was getting --

MR. SCHURTMAN: Objection. Hearsay.

THE COURT: Overruled.

Q Can you tell us what you said to Mr. Seider and what he said to you?

A Yes.

I was getting pretty manic to try to clip these things down to 20 minutes, and then either I called Mr. Seider or he called me in the cutting room, whatever, I was on the phone to him and I said, "Listen, do I have to put Angel Baby on? Do I have to still put Be My Baby? Can't I just drop them?"

He said, "Yes."

I just said, "Great." I jumped all around the cutting room and I slapped Greg and I said, "Great, great, great," because I knew it was at least three or four minutes each song, I knew I would be under 20 minutes and I would have a decent album on it.

I still tried to shove Angel Baby because it belonged to Morris.

Q Was the time period between the middle of November --

THE COURT: Then you did cut those two songs, Angel Baby and Be My Baby?

THE WITNESS: Yes.

Q And that was an artistic decision that you made?

A Yes.

MR. SCHURTMAN: Objection.

A I mean, if it would have been good I would have kept it.

THE COURT: Yes. Sustained.

I ought to have a list of these things, but, Mr. Bergen, do I understand that Angel Baby would have been one of three Levy songs on the record?

MR. BERGEN That's correct, your Honor.

There were finally You Can't Catch Me and Ya Ya, which was rerecorded again or which was rerecorded.

THE COURT: And the third would have been Angel Baby?

MR. BERGEN: That's correct, your Honor.

THE COURT: Then Be My Baby was not a Levy song?

MR. BERGEN: No. That was just another track on the record, another song.

THE COURT: All right, go ahead.

Q The time period between the middle of November, when you finished mixing down to the two track, and up

until February 4th and 5th when you did the final work on the album, that time period was not due to waiting to see who was going to put out the album, was it?

A No, no.

Q It had nothing to do with Mr. Levy?

A No, nothing at all.

MR. SCHURTMAN: Objection.

THE COURT: What did it have to do with?

MR. BERGEN: Excuse me?

THE COURT: I would like to know what it had to do with, that delay.

THE WITNESS: Well, the album couldn't go out for Christmas, it was too late, so there was no rush.

Capitol could not get it out in time for Christmas. The Christmas catalogue was already set and gone, so there was nothing to do about it. You can't put it out on sort of December 26, so the next batch of releases would be in the beginning of the new year.

Q There wasn't any particular reason why --

A No. You see, normally I put records around about October or November. I usually put one out a year, in general, and it goes out around about October for the Christmas period and I missed it so there was no point in carrying on.

THE COURT: Who was waiting? Who would set the schedule?

Would Capitol or would you?

THE WITNESS: Well, I would say when is the next best time to go out and they would say, well, it is January or whenever they would say, you know.

I would ask them, you know. Generally I stuck with Christmas myself.

MR. SCHURTMAN: Your Honor, I hesitate to do this, but may I object to your question.

So far there has been no testimony that Capitol was doing anything.

THE COURT: That was my next question.

Mr. Bergen, it does not help me very much to simply have you ask him whatever you asked him, was his reason for the delay due to waiting for -- I don't know what you asked.

I would assume that there were some concrete events that took place along in here that had to do with the scheduling of this record and I would assume that somebody is going to ask about that.

In other words, was he in touch with Capitol, was Capitol in touch with him or EMI? You know, something must have been happening. They must have been thinking about

the scheduling. But it isn't just a matter of a general statement.

Can you go into that?

MR. BERGEN: I can ask Mr. Lennon.

Q Mr. Lennon, was there any particular reason why--

THE COURT: No, no, let me ask it.

Mr. Lennon, look, what I am wondering about --

THE WITNESS: They would be working on the album cover, probably.

THE COURT: During the time prior to that February 4 or 5th date, did you have any discussions with anybody or did anybody get in touch with you about the scheduling of this record?

THE WITNESS: I'm not sure whether I talked to them before or after Christmas. It's probably after. But I was talking to them about making a TV commercial built --

Q When you say "them" --

A Tonly King at Capitol about making this TV commercial, which I usually control the making of my own TV commercials, and I told them what my idea was and they were to get in touch with Chuck Braverman, who is a prize winning film maker.

And Chuck Braverman particularly wanted to know was I going to be in a commercia. For a change he was sick

of working with bits of cardboard, because I would never go to make the commercial.

And I said, "Yes. I'll not only be in it, I will tell you, I am going to look like the guy in the 7-Up commercial."

And the news got back to Capitol and it got back to Ringo Starr, who was promoting his own album, and he wanted to be in the commercial. It was going to be a juke box and I was going to play that lead role in the 7-Up commercial and other people were going to be dancing in fifties clothes behind, and Ringo Starr and Harry Nilsson had said, "Let us be in the commercial." And I remember talking about that.

Usually when I finished that much amount of work, if I have a specific idea for the cover, I will tell Capitol and they will make up what they call a mock up, and then usually Al Coury -- if I'm out on the West Coast, Al Coury and the art designer will fly in to New York, pick it up and show it to me and I will say yea or nay to what they are doing.

That must have gone on between the time I finished the tape and the time it came out and I don't know -- for a week I was in Florida, so --

MR. SCHURTMAN: I respectfully object. Did this

happen in November, December, January or February?

To say it must have gone on does not help us.

THE WITNESS: I'm sorry, I don't know.

I'm presuming it went on after Christmas.

Q Mr. Lennon, when you talk about this 7-Up commercial, this was a commercial for 7-Up you have seen on television?

A It came on in the seventies.

THE COURT: We are going to take a short break here. I can't sit past until about 4:25.

I think the result of what you asked him, what Mr. Schurtman has suggested and what I have suggested be this, if you would during the recess sit down with Mr. Lennon and do your best to reconstruct what communications he had with Capitol prior to February 4 and 5 that would relate to this question of the scheduling.

I would have thought coming in here as an initial proposition that if Capitol was intending to put out this record and Mr. Lennon was intending to put it out for Capitol that there would have been some back and forth between them about when this would be done, and I assume that Mr. Lennon didn't just stumble into the studio on February 4, you know, out of the blue.

MR. BERGEN: The problem was --

THE COURT: But I don't know.

You know, this is not my -- I don't know anything about this business.

MR. BERGEN: I understand.

If I can just say something, I think the sequence kind of got out of whack in jumping into February but there are things that I can ask Mr. Lennon that can lead to that.

THE COURT: We don't want to get it out of sequence. Dates are hard. If we can just get the sequence and right now we are trying to get the sequence that relates tothis scheduling of Capitol, because what he said to me was --

Mr. Lennon, what did you say was the time when you go in and cut the lacquer master depends on when the record company wants the record and you don't rush in before, right?

THE WITNESS: Yes, yes.

THE COURT: What was it that apprized Mr. Lennon that Capitol wanted the record February 5 rather than November 25 or something like that?

MR. BERGEN: I can get to that, your Honor. Okay.

(Recess.)

THE COURT: Okay, Mr. Bergen.

CONTINUED DIRECT EXAMINATION

BY MR. BERGEN:

Q Mr. Lennon, can you very briefly tell us what your work schedule had been for a period of time prior to going in in October of 1974 on the rock and roll album?

A Okay.

I came right off Mind Games, I went to the West Coast to promote Mind Games.

Q This is in 1973?

A Yes.

Contacted Phil Spector, started the rock and roll album, that collapsed, went in and made Harry Nilsson's album for RCA, came out of that, came home, started Walls and Bridges, finished Walls and Bridges, then finished off the rock and roll album and then we get to the period we were talking about before the break, November.

Q That was almost a period of almost constant work?

A I -- that year I felt I was in the studio forever.

Q During this period, between the middle of November and February, did you speak to anyone at Capitol

about a release date of the album?

A No.

Q The rock and roll album?

A No.

THE COURT: Can I hear the question and answer, please.

(Record read.)

Q You recall in November 1974 having a conversation with Alan Klein?

A Yes.

I was visiting the Record World -- it's a magazine -- offices in 1700 Broadway, and that's the same building Alan Klein has his offices.

On the way down from Record World I popped in to say hello. He used to be our manager.

Q You are talking about Mr. Klein used to be the Beatles' manager?

A Well, not the Beatles. He had something to do with three of us, is the actual state of affairs.

And I went in and just chatted generally, how are you, et cetera, et cetera.

And he said, "I hear you are doing an album with Morris Levy."

And I just sort of said, "Maybe," you know.

He says, "I have been talking to Morris. Morris has called me up about the mechanicals," or whatever they do on copyrights, "on Bring It Home To Me," which I was very surprised about.

And I says, "Oh, really?"

He then said something about, "Oh, I won't do business with Morris."

I says, "Oh?"

He says, "Anyway, you don't have to give anything to Morris or Capitol. The Beatles don't have to give the club rights to anybody, they have them themselves."

And I said, "You must be crazy. We could have been putting these things out for years if there was such a big hole in the contract. How come we haven't been doing it? We could have been doing it for the last ten years."

Q You are talking about doing it on your own?

A Yes. If we have these rights, we can do it ourselves, we don't need any middleman.

He said, "That's true."

I immediately, when I left him, I called Harold Seider.

I says, "What's this, I just seen Klein and he says you don't have to give these records to anybody, we

can have it ourselves. That means all the Beatles records and all my individual records."

Well, Harold just said, "BS, you know, rubbish."

Q When did you talk to Mr. Seider about this conversation?

A I don't know. Probably the same day. I was so excited to hear all this stuff could be done.

Q And what did you and Mr. Seider talk about when you had this conversation?

A I said, "Alan Klein said we have these club rights, the Beatles have the club rights to their own records."

I says, "How come we are not doing anything? How come everybody is not doing something about it? Why aren't we repacking all the Beatles stuff?"

And he said it's just not true.

So I took it, you know -- I didn't -- I thought it was crazy for them to say if we had these rights why weren't we using them.

Q You mean Mr. Seider said it was not true?

A Mr. Seider said it was rubbish.

THE COURT: What did you understand club rights to refer to?

THE WITNESS: Well, I understood it to be, like,

almost anything other than going through the normal channels, like TV or you write away for it. You see them advertised in magazines, like a book club.

You know, you don't buy them in a shop, you buy them from some special club that you join, you know.

Q Do you recall going to Florida in December?

A Yes.

Q Prior to going to Florida, do you recall doing anything with respect to a commercial for the rock and roll album or a picture for the cover?

A I believe Tony King came to town from the West Coast. He was Apple's man in Capitol's office on the West Coast.

THE COURT: Tony King?

THE WITNESS: Yes.

And I played him the tapes or part of the tapes in the house and I showed him this photograph that I'd had for ten years, which was taken of me in Hamburg around about 1961 by this German photographer, and it is a photograph of me just standing in a doorway when I'm about 21, and it was around about the period when I would have been singing these songs, and I was explaining to him that's what I would use for the cover.

And the sequence, if you get mad at me again,

I don't know the sequence, but around about some period there was a Beatle Festival that was put on by other people, not by us, and low and behold it turns out this photographer has moved from Germany and living in America and he is selling these packages of early Beatle pictures to the fans. So not only did I have the original pictures he had given me in Germany, but we could get brand new ones, also.

I gave my only copy at that time, I believe, to Tony King to take back to the West Coast with him, and I think he went via the Bahamas, because he went there for Christmas, and the next --

Q Did you tell Mr. King to do anything with the photograph?

A To show them, you know, if they can make a photograph of it. They would have to do that, because I didn't have any negative.

I'm not sure that I knew about Juergen having been within reach during that period. I had no idea where he was. The last time I had seen him was in Paris in 1965.

Q When you say showing them the photograph --

A Showing Capitol the photograph and saying this is what I wanted to use so they would have had to photo-

graph it.

Q Did you go to Florida for the purpose of discussing or making a commercial with Morris Levy?

A No, not at all.

Q Why did you go to Florida?

A Mr. Levy invited me, because his son, he was having his son like I was, just for the periods, from his ex-wife or something and I was having my son, they are both aged 12 and he said he had some connection at Disneyland or whichever one it is --

Q Disney World.

A Disney World, and you know, would I like to bring him down there.

And I thought all right, because I was so worn out anyway that I didn't know what to do with my son Julian.

I was so tired after all this time working. It was a great idea. I could sort of sit in a room or something and Julian could play with Morris' kid, who is the same age.

Q Did you discuss any business with Mr. Levy while you were in Florida?

A By then Mr. Levy and I had certain ground rules where if he tried to talk to me about business I just

wouldn't answer and he wouldn't try me.

His only thing he ever said to me from October the 8th on was, "Has Harold gone to see Lyn Wood yet and where is Harold Seider?"

He knew, he knew I wouldn't answer the questions.

Q Do you recall Mr. Seider coming to Disney World to meet with you?

A Yes.

I surprised all the other Beatles and Mr. Seider by not being in New York when I was supposed to to sign the Beatle's settlement, and Mr. Seider suddenly found out that I was in Disneyland.

I called him and I said, "I am sorry to put you on the spot, but I didn't want to sign the thing because it still has not sunk in even though we have been going over it for three years. Why don't you come down to Disneyland and try to explain it to me one more time, this Beatles-Apple settlement," which he did.

He came down to Disneyland and we spent -- I tnink he got there the second day after Morris and I and our kids had already been around Disney World once.

Then the next day Harold and I spent the whole morning or maybe the whole day in his hotel room, I think, going over this Beatles-Apple settlement, and Morris and

the kids and May went off around Disneyland while we went over this settlement.

Q Did you spend --

A Then we went home the next day -- I mean home back to Florida, to the Sun and Surf.

Q Back to Palm Beach?

A Yes.

Q Did you spend more than a day with Mr. Seider discussing the Beatle's dissolution or settlement?

A No. We were only there a day in Disney World and we thought it was appropriate that I was signing it in Disney World and everybody else had been doing it in a sort of, you know, proper room.

THE COURT: You actually signed the document down in Disney World?

THE WITNESS: I think I signed it there.

Or maybe I didn't sign it. I got that wrong, because now I remember some English attorney came much later, when I was back home, and brought it to my house.

Q Meaning in New York?

A In New York, yes. And I took polaroids of myself signing it, which I was going to send to all the other Beatles. That was it.

So I didn't sign it, I just went over it with

him for the whole day.

Q Do you recall meeting a Mr. and Mrs. Garlick while you were in Florida?

A Yes. They were the people whose apartment I was in or it was their daughter's apartment or something, as far as I know.

Q Did you discuss the rock and roll album with Mr. Garlick and his wife at all while you were with them in Florida?

A I don't think there was any discussions.

I got the understanding that Lou Garlick was something to do with printing album covers and he seemed to print everybody's. You know, he seemed to have the corner on the market, as it were.

I didn't discuss business with him, though.

Q Can you tell us how you spent most of the time in Florida?

A Well, after Disneyland took two days out of the time in Florida, I think, and then I spent a lot of the time in doors or keeping out of the Sun, because I'm not very, you know, good in the Sun. It gets to me. And I just was hanging around waiting while Julian went to play, you know, in the pool or by the sea. Then there was just sort of general lunch time eating.

Mrs.Garlick had this kind of -- or the Garlicks had this little cabana or whatever you call it, but I didn didn't spend too much time there because people kept coming around me, so I spent a lot of time in the room. And then at night -- I was reading, as a matter of fact, in the bedroom most of the time.

Then at night I think about twice we went to different dinners with the Garlicks and Morris, and that was about it. Then the week was up and then we came home.

Q Do you recall approximately when Julian went back to England?

A Sometime after new year started.

Q Do you recall that sometime in January meeting with some people from Capitol?

A That would be when Al Coury and I think Dennis Killeen and definitely Roy Kohara, who is the art director, came to New York and we did our usual, which is eat at Gallaghers and then go back to the Sherry Netherland, which is where Al Coury always stays.

Q Do you recall when this meeting was, Mr. Lennon?

A No, some time in January.

Q Do you recall whether it was in the early part of January or the latter part of January?

A I can't help you. Just January.

Q Can you identify who Mr. Coury is and Mr. Kileen and Mr. Kohara?

A Al Coury's title was vice president of Capitol Records, and A and R man, artists and repertoire. It is an old fashioned phrase. Kohara was an art director and Kileen is supposed to have something to do with art direction. Maybe he is the boss of that department.

Q What does an art director do?

A That part of the record company usually has to do with the album covers, promotion, the shirts, postcards, gimmicks, radio spots, perhaps. That is Kileen's department.

Q Now, can you tell us as best you can remember what was said during the meeting with these gentlemen?

A Well, I don't remember what was said over dinner, but I remember in the hotel more. I was telling them about --

Q Excuse me, who was there in the hotel room, aside from Mr. Coury, Mr. Kileen, Mr. Kohara and you?

A Maybe May Pang. Was Harold Seider there?

Q Do you recall whether Harold Seider was there?

A I don't remember.

Q Can you tell us what was said?

A This is the first time I had confronted them with the idea of how about let's put it on TV and I explained why I thought it might be a good idea, because the critics had been wait over a year for this wonderful Spector-Lennon album, and they were going to shoot us down, and we were going to treat it like it was an oldie by goldie, and I told them all the thoughts I had about putting it on TV, and I thought that was interesting, because it would be the first time anybody had done it. They let me talk for over an hour, and they told me why it would be a lousy idea, and everybody would be furious at me, those rack jobbers, and all those others who wanted a piece of it would hate me, and he put me off the whole idea.

Q Who is that? Mr. Coury?

A Yes.

Q Do you recall anything else that Mr. Coury said on that subject?

A He said, "Don't worry. The album will do all right."

I said, "They have been waiting for it so long. There has to be more publicity about this album. And there

are the critics."

He said, "Don't worry, the album will do all right. Just put it out like you normally do. You don't have to think of some gimmick."

Q What else was said?

A What else was said?

Q Was anything said about the cover?

A I found out that Jurgen Vollmer,who was living in either Brooklyn or some outlying area of Manhattan, had been selling these pictures of me. I told Coury about it. I said, "The guy has got these pictures, let's call him now and get a better picture than he had, which is the only copy I had sent him, and they called him, and Roy Kohara spoke to Jurgen on the phone and they made some deal about buying the rights to the picture.

Q Did the people from Capitol have some kind of a mock-up of the cover?

A Yes, the usual thing they do when they come to see me at this stage of the game is to bring me a mock-up of the idea, and they brought me a mock-up of the album cover, and up to that point I still had not got a real title.

MR. SCHURTMAN: I object. I have never seen this mock-up. This is like the story board that you would not let in.

MR. BERGEN: There has been previous testimony about the mock-up in depositions.

MR. SCHURTMAN: We requested all advertising material.

THE COURT: I am just not oriented. You said there were story boards I would not let in on your side?

MR. SCHURTMAN: Mr. Levy tried to testify about story boards he worked on in December. There was some objection on the grounds we had not given them the story board, and you struck his testimony. At that time Mr. Levy was trying to explain everything that he was doing. It is still applicable. I object to the mock-ups on the same ground.

THE COURT: I may reconsider that. As a case like this develops, I find out what I think I need. Now, if you want to go back over that story board thing, I will be happy to reconsider that. I do not recall the exact thing about that now.

MR. SCHURTMAN: I will withdraw the objection as long as we can put in a similar type of evidence.

THE COURT: I want to be liberal in letting the evidence in.

MR. PRETTYMAN: Your Honor, before you reconsider that -- and I understand you are not going to do

it now -- I hope I will have a chance to show you that the two situations are entirely different.

THE COURT: Okay.

THE WITNESS: They had the mock-up, which is just a drawing of the photograph itself, and where they would roughly put the lettering, the descriptions, and because they had no title, the guy had just -- Roy Kohara or whoever drew it -- just drew in John Lennon Rock and Roll. And they had the idea of making the lettering on the back of the cover neon lettering, and they had written Rock and Roll in neon. I said, "Oh, great, that is the title, because that is what the whole album is about, it is just that, it is rock and roll. So we don't have to think of some extra title." They had written it in because they didn't know what to write in.

Q I show you Plaintiffs' Exhibit 35. Is that the album cover?

A Yes, they had drawn the cover and they had written this in because they didn't know what to put. I said, "Leave it like that. Write it in."

THE COURT: I will have to interrupt. I will see you at 10 o'clock tomorrow.

(Adjourned to Thursday, January 22, 1976, at 10 o'clock a.m.)

Big Seven Music Corp. et al.

v. 75 Civ. 1116

John Lennon, et al.

New York, New York

January 22, 1976
10:00 a.m.

- - -

(Trial resumed.)

- - -

THE COURT: I said yesterday that this criminal hearing was on for tomorrow. Now, a lawyer who is involved in that criminal case has a case in Brooklyn and they are charging the jury tomorrow, so he is not available. I had to postpone that a week.

Can you go ahead with your evidence tomorrow?

MR. BERGEN: Yes, your Honor.

THE COURT: We will plan that.

MR. GRUMBACH: I have two preliminary matters. I have given to the plaintiffs a list of the defendants' documents that have been pre-marked. It is a partial list. It does not include the ones that we expect to use on cross examination.

And yesterday, Mr. Schurtman during the course of Mr. Graham's examination requested the

resolution relating to the 1973 settlement before your Honor which Mr. Graham had alluded to in connection with the 1974 Beatle settlement. I have explained to Mr. Schurtman that this document is a sensitive one in connection with extensive other litigations involving the Beatles, and I have given to Mr. Schurtman that on the understanding that he will compare the original photostat with the extracts which relate only to this case, as to which I have no objection, and that he will not discuss or reveal the contents of the balance of that original document to anyone. He is now looking at it.

MR. BERGEN: I have one or two things. First, on behalf of the defendants John Lennon and Harold Seider we would like to withdraw our objection to the motion that was made by Mr. Schurtman to amend the complaint to include the fraud claim that he had asked to have dismissed before Judge Mac Mahon. We do that with two caveats: One, we would like to have articulated on the record what that fraud claim involves, and, two, the State Court case is still pending across the street, and since we are going to allow them to bring the fraud claim back in here, we would like to dispose of that once and for all and have the State Court case dismissed with prejudice so we can decide it right here before your Honor.

THE COURT: What do you say to that. Mr. Schurtman?

MR. SCHURTMAN: I would not agree to the second condition.

THE COURT: I don't know anything about the State Court action. Is there a State Court action by the same plaintiffs?

MR. BERGEN: By the same plaintiffs with the same parties, and back in October the plaintiffs moved to amend the federal claim to bring in all the state claims. That motion was granted by Judge Mac Mahon, and then on the first day of the trial Mr. Schurtman asked that the fraud claim be dismissed, that the second part of it, the antitrust claim, the monopolization claim, be dismissed, the damage to reputation, and the predatory pricing claim. So that there is a State Court complaint sitting across the street that is exactly what we have here, except on the first day of trial Mr. Schurtman asked that some of those claims be dismissed.

THE COURT: Your motion was to amend the complaint to --

MR. SCHURTMAN: To reinstate the fraud claim.

THE COURT: That does not embrace the entire

State Court action?

MR. BERGEN: The rest of the action was already in here, your Honor.

THE COURT: You are saying that if you brought in the fraud claim you would have everything in the State Court action?

MR. BERGEN: That is correct.

THE COURT: Is that right?

MR. SCHURTMAN: The same issues are involved in both actions, but there are different questions of jurisdiction. At this point I am not prepared to dismiss the State Court action. If at the end of this case the defendants feel there is an appropriate basis for dismissing it, then know what their remedies are.

THE COURT: Well, I guess they do.

But when people have two litigations and two different courts, the courts have enough to do without duplicating each other.

MR. SCHURTMAN: We are not prosecuting the State Court action at this point.

THE COURT: Why don't you drop it?

MR. SCHURTMAN: I don't want to drop it at this point until I see what happens in this case.

THE COURT: What are the contingencies?

MR. SCHURTMAN: I can conceive of a situation where your Honor or the Court of Appeals, for that matter, might decide that you have no further jurisdiction, and suddenly I am left without anything. I don't see why I have to stipulate at this point to drop the State Court action.

MR. BERGEN: He will not argue this Court does not have jurisdiction . We want to resolve it right here and now and not go across the street.

THE COURT: Among other things, I have not got into any question of jurisdiction. What is your jurisdictional basis here? The breach of contract claim? How is this in the Federal Court?

MR. BERGEN: The plaintiffs move to amend to bring that in here.

MR. PRETTYMAN: It is an antitrust claim. He filed purely state claims first in the State Court. Then he filed antitrust claims in this court. And then for various reasons he moved to bring all of his state issues over to this court, so that this court theoretically would have both the antitrust claims and state claims, would have the entire cause of action. He then moved to drop some of the state claims, and he is now trying to get this fraud one back in again.

Mr. Bergen is agreeing to let him do that, but the problem is that unless we get rid of the state claims he is having two bits at the apple, even though it was he who decided to bring all the state claims over here.

THE COURT: He is not going to get two bites at the apple.

Is there any real question about jurisdiction, the jurisdiction of this court to try the basic claim in this case, namely, the breach of contract claim? If there is, it is a travesty, because there is a lot of work going on here, and if we are going to end up some day with somebody saying we have no jurisdiction, it's going to be a lot of frustration on the part of a lot of people.

Now, the way the case shapes up it is basically a breach of contract case. I have heard almost nothing on an antitrust claim. But I don't want to waste the work we have done here.

MR. BERGEN: Neither do I.

THE COURT: The Court of Appeals sometimes does not worry whether we waste our time; they want to enforce the rules of jurisdiction.

THE COURT: Has anybody thought about this? Have you got jurisdiction here, Mr. Schurtman, over the breach of contract claim or don't you?

MR. SCHURTMAN: We believe --

THE COURT: It seems to me you ought to take a position. I assume that you do.

MR. SCHURTMAN: We believe there's pendent jurisdiction ancillary --

THE COURT: Pendent to what?

MR. SCHURTMAN: Pendent to a Federal anti-trust claim.

THE COURT: What is the anti-trust claim?

MR. SCHURTMAN: There was a boycott of our suppliers and television stations which was induced by the defendants when they told him not to do business with us and gross us out of the market. That's the anti-trust claim.

THE COURT: The thing is, the garden variety pendent jurisdiction situation is where your major claim -- I'm speaking really off the top of my head in a way.

The typical classic case of pendent jurisdiction is where you have a Federal claim that is kind of the major substantial claim.

MR. SCHURTMAN: I agree.

THE COURT: For instance, a securities claim under

the securities statutes, and then someone also brings in maybe a breach of contract claim or they bring in a common law fraud claim and those are pendent.

The main emphasis in the case very often is the Federal claim.

Here the main emphasis so far is definitely not the Federal claim.

MR. SCHURTMAN: Precisely.

THE COURT: We are all spending all this time on the breach of contract claim.

MR. SCHURTMAN: Your Honor --

THE COURT: The anti-trust claim, concededly it relates to events at the end of the situation. It is something nobody is emphasizing now. Maybe there's no jurisdiction and you should go over to the State Court, we ought to stop it right now. It was never briefed or argued. Was it briefed or argued before Judge MacMahon?

MR. SCHURTMAN: Let me explain what happened. You listened to the other side. Give me a chance.

We originally started a State Court, for breach of the oral agreement, interference with contract and various other common law claims.

After we had started the State Court, we analyzed the facts and we came to the conclusion that the

boycott of our suppliers and TV stations would also under the case of Klaus against Hale, which I mentioned in my opening statement, gives us a basis for a treble damage claim. The problem we faced was that we couldn't bring tnis treble damage claim in the State Court, which has no jurisdiction under the anti-trust laws.

So we filed a separate anti-trust claim in the Federal Court by itself.

My strategy at that point, I admit quite frankly was I thought the State Court action would go to trial on the breach of contract issue.

If we were successful in the breach of contract action, we would then come into the Federal Court with our boycott claim which had to be necessarily based in part on our proving agreement and say: all right, we are entitled to treble damages under the Federal law.

Unfortunately for my strategy the Federal anti-trust case was assigned to Judge MacMahon, who apparently has the shortest calendar in this court, and before I knew it, I think three months after we filed it, he said: I want you to complete discovery and be ready for trial, long before the State Court action was approaching trial. We moved for preference in the State Court. The defendants opposed it and said they didn't want an earlier trial in the State

Court. I was faced with the position of trying the naked anti-trust claim before Judge MacMahon without any of the underlying issues being tried.

At that point I made a motion to Judge MacMahon and I said: Look, if you are going to try that Federal claim first, at least give me a chance to try all the other issues because one doesn't really make too much sense without the other. The order of priorities had been reversed.

The defendants vigorously opposed my application to amend the Federal complaint to include the State court claims. We discussed the question of pendent jurisdiction, some question was raised about that.

Judge MacMahon at first decided to deny my motion and then he changed his mind and said, "Let's try everything.

THE COURT: Okay.

MR. SCHURTMAN: The one thing I'm not prepared to do, your Honor, and I think perhaps we can save time, is I have stipulated away many things in this case, including the very valuable right to a jury trial, in part, in great part to accommodate the scheduling problems that your Honor poin-ed out that were created by the sudden assignment of the case to you.

I have stipulated away enough. I will not

stipulate away whatever rights we may still have in the State Court. I don't want to be mouse trapped into the position where some day the Court of Appeals in its wisdom decides there's no Federal jurisdiction.

THE COURT: I sympathize with that. I appreciate your statement. The thing is, I think that nobody, neither Judge, nor lawyers, nor parties, nor witnesses, nobody wants to have this trial held with all the work that it involves and then have some snafou which negates it. I assume that nobody wants that.

I certainly don't want to spend two or three weeks on this case with a doubtful jurisdictional situation. I have got other things to do.

There's been a lot of work. It seems to me there are ways to take care of this. It is a legitimate situation which you pose. There are ways to take care of that.

It seems to me what you ought to consider is -- I am perfectly happy to say this, and let you go over to the State court.

MR. BERMAN: No, your Honor.

THE COURT: I'm perfectly happy to do that.

MR. SCHURTMAN: In the State Court I would ask for and get a jury trial.

MR. BERGEN: We have been on trial now for seven days, two days before Judge MacMahon and five days before your Honor. We are not going to raise the question that there is no jurisdiction in the court. We just want to continue with the trial and finish it here. That's the only reason I raise the question allowing Mr. Schurtman to bring in the fraud claim.

THE COURT: Look, what you ought to consider it seems to me is agreeing that if -- nobody wants to just spend a lot of time on a case and then end up having it fruitless. I'm not interested in accommodating anybody's strategy in that regard.

It seems to me that what you ought to consider is in the first place -- I assume you don't contest the jurisdiction of the Court, right?

MR. SCHURTMAN: At this point?

THE COURT: Right. You do not?

MR. SCHURTMAN: At this point I do not.

MR. BERGEN: What does he mean "at this point"?

MR. SCHURTMAN: I want to see what evidence comes in in the anti-trust case. You see, your Honor --

THE COURT: It seems to me what ought to be considered here is an agreement that if we continue this trial, that the results of this trial, in any event, will dispose

of the entire litigation and it will be agreed to have it in some way.

MR. SCHURTMAN: I will not agree to that, your Honor. I have stipulated away enough of my rights.

THE COURT: You talk about stipulating your rights. You had a free choice. Nobody pressed you about the jury question. That's on the record. For my personal observation, I would say quite candidly I do not see any prejudice to your client verses the other side as far as not having a jury.

MR. SCHURTMAN: That may be your opinion.

THE COURT: I think this is really out of the question. We are wasting time.

MR. SCHURTMAN: I will not stipulate to dispose of the State Court; if your Honor wants to stay this --

MR. BERGEN: We will allow them to go ahead, your Honor.

MR. GRUMBACH: Your Honor, first of all, for Apple Records, we believe there is jurisdiction not simply as a matter of consent but as a matter of law.

THE COURT: You can't consent to it anyway.

MR. GRUMBACH: Exactly.

Second, I just want to point out that on the anti-trust issue which Mr. Schurtman has just said he will wait

and see what the evidence is, it is of course obvious that the anti-trust case is his case. I just want to point out that what evidence he puts in is determinative of his self-fulfilling prophecy, if he puts it in those terms. We think that there is full jurisdiction.

THE COURT: The thing is, I think we have to go ahead. What should be prevented is a strategy by which somebody, if they lose, is able to somehow avoid the effect of that by some jurisdictional argument or some piece of strategy and get a second bite over in the State Court. It is just not right. I don't want that to happen. I think it is a travesty upon this Court, it is a stravesty upon the State Court and upon anybody else.

MR. BERGEN: May I state for my clients that will not happen. I make that representation to the Court.

MR. PRETTYMAN: Your Honor, could I just add one sentence? The reason I believe that all of the emphasis to date has been on the October 8 meeting and whether in fact there was a contract, the reason you heard so much about that rather than anti-trust is because all of the parties agreed, they agreed before Judge MacMahon -- this includes the plaintiffs -- that if there was no agreement, then everything including anti-trust fell.

That was why Judge MacMahon said: Let's try

everything here together and let's particular direct ourselves to whether there was an agreement. If there was no agreement, then everything, anti-trust and everything else fell.

I think that's really why you had the emphasis that you have.

THE COURT: It is the inestimable logic of this case. There's no question about it. If the Court decides that there was no contract and, therefore, no breach of contract, this case basically ends unless there is some fraud claim or some tort claim of some kind in connection with those events.

MR. PRETTYMAN: We have to dispose of the counterclaims. In terms of their case you are right, the thing would fall. I think that's what they have said.

THE COURT: Isn't that right, Mr. Schurtman? In other words, if the Court decides that there was a contract made on October 8 or thereafter, then we go on to consider the breach of the contract and the cumulative effects of the telegrams and so forth, those incidents in February, and whether they amount to an anti-trust violation.

In other words, you would consider whether they legally add up to not only an interference with contract and part of the breach and so forth, but whether they legally

add up to an anti-trust claim given right to treble damages.

Isn't that the way the case stands up?

MR. SCHURTMAN: That's correct.

THE COURT: If the Court finds that there was no contract made on October 8 or thereafter between Mr. Levy and the other parties, then I don't get to the consideration of the anti-trust claim, right?

MR. SCHURTMAN: I'm not entirely clear on that, your Honor.

MR. PRETTYMAN: They have said --

THE COURT: Wait a minute. I thought that's the way we were operating all along.

MR. SCHURTMAN: Basically your Honor is correct. I think if there is a fraud involved in the case, that might get us into the anti-trust claim, too.

In other words, I just have to think through all these legal permutations.

THE COURT: I think we better think.

MR. SCHURTMAN: Perhaps I'm not capable of doing it on my feet.

THE COURT: It's necessary to understand this in order to have a sensible trial.

MR. SCHURTMAN: Let me point out one thing, your Honor. There are well-established principles of res judicata

collateral estoppel and so forth. Once this case is over, if anything is left of the plaintiff's claims, then I think we are entitled to pursue them wherever we can.

If nothing is left, then the defendants can certainly move to dismiss the State Court case and I may at that point stipulate to it.

I'm not a prophet. I can't decide how this case is going to develop. I'm simply not going to stipulate away any rights my clients may have. I won't do it by stipulation.

THE COURT: You are absolutely right. That would be just a clean cut -- I don't think there would be much problem with that if we didn't have the possibility of some problem about jurisdiction. If a Court makes a judgment and has no jurisdiction, it is not res judicata.

MR. SCHURTMAN: That's right. You see, Judge, the reason I'm so adamant in this point is that I got burned once in a situation like that where we tried a case in the Federal Court. I won it even though the other side claimed jurisdiction, and my victory was snatched away from me because suddenly it was decided there was no jurisdiction.

THE COURT: All right.

Let's go ahead with our proof.

MR. BERGEN: Mr. Lennon.

J O H N L E N N O N, resumed.

THE COURT: As far as the inclusion of the fraud claim, I cannot see any real prejudice. If you are willing to have the fraud claim litigated here, it seems to me that that is a step forward for all concerned.

In other words, Mr. Schurtman isn't stipulating to drop the State Court action, he just is not ready to do that. By getting the fraud claim in here, we are closer at least to having all the claims disposed of in this action. I would think that would be all to the good.

As long as we are going to go ahead and get all the facts in and consider them, why should we not attempt at least to dispose of that?

I think it makes sense.

MR. BERGEN: That's fine with us, your Honor.

THE COURT: All right.

So the complaint will be deemed amended to include a cause of action for fraud. I won't take the time right now to get --

MR. BERGEN: Can we just have it clear that the fraud claim is as was alleged in the amended complaint?

THE COURT: That's what you intended, right?

MR. SCHURTMAN: So stipulated.

THE COURT: That's proper. Thanks a lot.

MR. GRUMBACH: On behalf of Apple Records, I will consent, too.

THE COURT: Okay. I take it all the defendants do. Thank you.

Okay, Mr. Bergen.

DIRECT EXAMINATION

BY MR. BERGEN:

Q Mr. Lennon, you testified yesterday about Alan Klein being your business advisor.

Can you tell us when Mr. Klein ceased being your business advisor?

A It was March of '73.

Q Are you and the other Beatles and Mr. Klein involved in any litigation?

A Mr. Klein and Abkco, which is his company, are suing all the Beatles and all their companies and everybody.

Q Is that here in New York?

A Yes.

Q Is that a lawsuit that Mr. Klein is suing for millions of dollars?

A Yes.

Q Are you and the other Beatles and their various companies also suing Mr. Klein in England?

A Yes, that's true.

Q Who replaced Mr. Klein as your advisor?

A My personal advisor, I use Harold Seider, each Beatle took his own advisor after Abkco finished.

Q Did you ever give Capitol Records a cassette of any portion of the rock and roll album?

A I believe I gave Al Coury a cassette just after I had done the first piece of work on the Spector tapes, meaning just after I sang over the voice tracks again.

THE COURT: Read the question and answer, please.

(Record read.)

Q This is before you did the recording sessions of two tracks in October?

A Yes. This is after the first work, and I sent him a cassette to the West Coast so he could have the tracks that he had gone to so much trouble to collect of Mr. Spector. I don't normally send him cassettes. I don't normally send anybody tapes until I finish the album.

Q That includes Capitol?

A Yes. They don't hear it until it is finished.

Q Now, did you and Mr. Coury discuss that cassette? Do you recall a discussion with him about the cassettes?

A I think one of the reasons for sending him, apart from letting him know what it was they were fighting about, to see if there was any possibility --

MR. SCHURTMAN: Objection.

THE COURT: Overruled. You may continue.

A -- I sent it so he could hear --

MR. SCHURTMAN: I object, unless he referred to the discussion. He is just giving us his state of mind.

MR. BERGEN: I will ask the question.

THE COURT: I know I sustained an objection of yours before, but we have had testimony all along about his intentions and so forth, and it does help a little to illuminate, and I think I will be a little liberal even on that.

Q Mr. Lennon, was there a reason you sent the tapes?

A I thought we could get a single or two out of it, and I gave it to him for his and the people at Capitol's opinion. I thought one track might make a good single, and I wanted an opinion on it. So I sent it to him and he said he didn't think so -- I am paraphrasing -- they told me to carry on with it, forget about singles.

Q When you say carry on with it, you mean do additional work?

A I can't say they told me to do that, but that is why they had the tape, to see if there is any single there.

Q Are you now the president of Apple Records?

A I don't believe so, no. I have not been for a few months.

Q During the period beginning in 1973 through 1974 what was your authority as president of Apple Records, Inc.?

A I didn't have any.

MR. SCHURTMAN: Objection. An agent of a corporation cannot state his own authority.

THE COURT: I will take it for his understanding.

MR. BERGEN: That is all I am asking, what was his understanding.

Q Were you president of Apple Records back in late 1974?

A Whenever they handed out the original titles they gave me the presidency. It was a meaningless title. Somebody had to be called president.

THE COURT: When did he stop being president? Do you know the date?

MR. BERGEN: I am not sure. Some time during 1975, I believe, your Honor. I think it was as a result of the dissolution agreement of the Beatles' partnership.

THE COURT: Were you present in late 1974?

THE WITNESS: Until the thing ended, the partnership, yes.

THE COURT: Until that settlement?

THE WITNESS: Yes. I just asked them to take me off the books, I am sick of it.

Q You testified yesterday about a meeting you

had with the Capitol people, Mr. Coury and Mr. Kileen some time in January?

A Yes.

Q Do you recall what next happened with respect to the Rock and Roll album?

MR. SCHURTMAN: Could we try to fix the date of that meeting? The defendants have conceded it took place on January 28, 1975. Have we got that date fixed?

MR. BERGEN: Mr. Lennon said yesterday he did not recall, but we will stipulate it was January 28, 1975.

THE COURT: All right, we will stipulate. Thank you.

Q What happened next?

A The next thing that happened was I got a call from May Pang saying she got a call from Morris Levy and that Morris Levy had said that it is nothing personal, but he is putting the tapes out,and if I want to do anything to them, like edit them or do anything to the tapes, that I should get in touch with him, and that the publicity could do good, anyway, and not to take it personally, and that was the message I received.

Q What was your reaction when you got that message from May Pang?

A I was shocked and I thought he had a nerve

asking me to edit the tapes while he is going to put them out,anyway, but I was a bit stunned and scared because I thought I was in trouble, and I immediately called Harold Seider or tried to find him. I saw him that night.

Q Did you ever try to contact Mr. Levy?

A No. I did not know what to say to him. What am I going to say? He told me he was going to put the tapes out. What am I going to do, argue with him?

Q You say you saw Mr. Seider that night. Do you recall where you saw him?

A At home, I think.

Q Do you recall what you discussed with Mr. Seider?

A Only that I just said, "Morris called and says he is going to put the tapes out." I think Harold already knew it. And then we called Capitol.

THE COURT: When you say, "we"?

A Harold Seider and I called Capitol.

Your Honor, I think that middle window is a little open and that is why we are hearing all that noise. It is hard to think.

(Window closed.)

THE COURT: Who at Capitol?

THE WITNESS: I am only guessing; I called

Al Coury. I know him. I would not know who else to call. I could not swear to it.

Q Now, what was the next thing that you recall happening with respect to the Rock and Roll album?

A The next thing I think is that Capitol called me and says, "Make the masters."

Q Did there come a time when you learned that Mr. Levy's album was being sold?

A Yes, I was at home, and Jimmy Iovine from the Record Plant called me.

THE COURT: Who is that from the Record Plant?

THE WITNESS: Jimmy Iovine. He is like an assistant engineer.

THE COURT: How do you spell that?

THE WITNESS: I-o-v-i-n-e.

THE COURT: He called?

THE WITNESS: He called me and says, "Hey, what is going on? Your record is on TV."

I said, "Where? Where?"

And he says, "It is on Channel 9." This was on a Saturday. So I sort of left the TV on Channel 9 for most the day, but then I got bored waiting for it and went back to the normal TV, and then I finally saw

the commercial, Morris' commercial on a Sunday. I think it was on Channel 9 or 11.

t3/2 am Q Can you describe the commercial that you saw?

A Well, it was very fast and it was just a sort of crummy looking album cover, the yellow one.

MR.SCHURTMAN: I object. The commercial is available. We can put it in evidence.

A (Continuing) It was a very quick sort of thing. I didn't think it was a very good commercial for Morris' album and I tried to get the address down, but it was so quick I could not get it and it came and went. I think I watched it twice and that was it.

Q What was your reaction when you saw the commercial?

MR.SCHURTMAN: I object.

THE COURT: He has already given us that.

MR. BERGEN: I am trying to get really, your Honor, what his reaction was to the commercial as an artist, and I think it goes to our counterlcaims. And as long as Mr. Lennon is here, we ought to go into it.

THE COURT: Overruled.

A I think it was worse than ever the normal commercials for those packages, which are generally bad.

It was in my opinion a lousy commercial and I didn't like it at all. I didn't like the picture or anything.

Q Mr. Lennon, have you ever seen the Roots album?

A I got my secretary to send for one. I didn't get the address myself, but I told somebody to watch it, my secretary, and so she sent away and I got one in the post about two weeks later.

Q I show you Plaintiffs' Exhibit 34 and ask you if that is the Roots album?

A That is it.

THE COURT: Can I see that a minute?

Q Have you ever listened to the Roots album?

A No.

Q Is there a reason you have not listened to it?

A Well, unless something extraordinary happens in between times, I don't want to listen to it. I don't see why I should.

Q Can you tell us whether you would have allowed that album cover to go out?

A No. I mean, this is nothing like anything I have produced myself. The picture is out of focus: it is an old picture of me. That does not matter.

It just a lousy looking cover, and the colors, I don't like. I would not allow Capitol to advertise other artists' records on my cover. This is like endorsing whatever these other packages are. It is just not a good looking album.

Q You are referring now to the advertisements on the back of Exhibit 34?

A Yes, and they are advertising other people's work on the back of my album.

Q Have you or the Beatles ever done that?

A The Beatles and me, as far as I remember, have never endorsed anything other than our own products.

MR. SCHURTMAN: That was not the question, your Honor.

THE WITNESS: Well, this is endorsing some of these products. I don't endorse other people's records.

THE COURT: I think it is an answer.

Q Have the Beatles ever had opportunities to endorse other records or you?

THE COURT: Let us not get into that.

MR.BERGEN: I think this one point, your Honor, is important.

THE COURT: He said he would not do it.

We don't have to get into other opportunities. I would assume that people would have been happy to have the Beatles endorse their products at times.

Q You talk about other album covers. Mr. Lennon, I show you some other albums which are either Beatle albums or yours. Will you just go through them, please, and tell us whether they were your covers and give us the nae of each of the albums? Tell us whether they were covers that you and the Beatles personally supervised?

A This one was --

THE COURT: Wait a minute.

MR. BERGEN: I don't think it is necessary to put each one of them in the record.

THE COURT: If he is going to say "this one," we better have some number on it so that it is identified, because nobody will ever pick it up later.

MR. BERGEN: Can he refer to the name of the album?

THE COURT: Mark them for identification. If you are just going to use two or three as examples, mark them.

MR. BERGEN: I am just going to use two or three examples, your Honor.

Q Mr. Lennon, referring to these various

mmbr 11 Lennon-direct

exhibits just marked, will you just tell us what each one of them was or is?

A As far as I remember, these are completely different from the originals as I remember them, but this is almost as we put it out in England. That would not have the writing over the top here. The picture would go right on the edge.

THE COURT: This is CB-1.

(Defendants' Exhibits CB-1, CB-2, CB-3 and CB-4 were marked for identification.)

Q Now, referring to CB-1 go through that again.

A As far as I remember, this is about the third album cover that the Beatles ever made, and this is when we took control of the covers. Initially, when we made our agreement the record company would just make the cover, choose the photographer, and as far as I know, this is the first time we took over, chose the photographer ourselves, and posed it the way we wanted.

This album, which is mrked CB-3 is when we took over not only the cover, but we took over the sound, the tape and everything. We had not got to the master lab yet, because we didn't know what they did to it upstairs, but we took over every facet of the recording. So that is an example of how we gradually took over everything.

CB-2 is called Sergeant Pepper. We not only took over everything, but we could hire fairly well known artists to do designs and pay them large fees. There is an artist called Peter Blake that we used to design the fold-out, the gimmicks inside. It was done by a famous artist called Peter Blake in England. EMI was complaining about the cost of this cover. There was a big hassle with them about the price of the cover but they agreed in the end we were right.

This is CB-4, and these are childhood paintings of mine, and this was done in conjunction with the art director at Capitol, Roy Kohara. I am just showing that I take a lot of detail. The cover is almost as important as what is inside it, and nowadays the audience or whoever buys it expects to get a decent cover, and artists like myself quite often include things like inside, like posters and games. It gets like Christmas. Your cover is as important as the music.

THE COURT: Does Walls and Bridges have a fold-out?

THE WITNESS: I even use the sleeve inside for a design. On the Imagine album I made I had a friend design the lyrics to go in a special way inside. This is the Sergeant Pepper one.

CB-4 has the folding cover, and it also has an inserted little booklet or whatever you callit.

THE COURT: Now, going back chronologically, Walls and Bridges was put out in 1974?

THE WITNESS: Yes.

THE COURT: What is the next one chronologically?

THE WITNESS: That is '67, I believe.

THE COURT: Sergeant Pepper?

THE WITNESS: Yes.

THE COURT: That is CB-2, 1967?

THE WITNESS: Yes.

THE COURT: Sergeant Pepper has the lyrics on the back?

THE WITNESS: Yes.

THE COURT: Do you sometimes put lyrics on and sometimes not?

THE WITNESS: Yes. We probably were pleased with these lyrics, so we put them on the back.

But in the old days what would happen was they would never print the lyrics on an album, so when you listened to it you could not tell what they were talking about. So you are supposed to go out to a shop and buy sheet music, which is what they did in the '20s and '30s.

But we started to print the lyrics right on the albums so they could listen and read them while they listened. The record companies didn't like it and the sheet music companies didn't like it, but we liked it. So it has been my practice since then to print the lyrics. I started utilizing this part of the package. They call it the sleeve.

We will come to that in a minute. What do you call that piece that is inside the Sergeant Pepper album?

THE WITNESS: It is just like a gift.

THE COURT: It is called a cut-out sheet?

THE WITNESS: I don't know what they call it officially. It could be a poster or a cutout. You put a poster of yourself inside and then they take it and stick it on the wall.

THE COURT: Now, can I see the Walls and Bridges again, please?

MR. BERGEN: May I just ask him one question about Walls and Bridges.

BY MR. BERGEN:

Q Mr. Lennon, whose drawings are in the insert in Walls and Bridges?

A Those are paintings and drawings I did when I was age 12.

THE COURT: Now, let's go back to Sergeant Pepper. That was preceded by what?

THE WITNESS: This would be Rubber Soul, I think it was.

THE COURT: And this came out when?

THE WITNESS: '65, I think. The photographs were taken by our own personal photographer.

THE COURT: Then what was the other one?

THE WITNESS: This must be '64, 1964.

THE COURT: This is theBeatles?

THE WITNESS: They had different titles and things like that. I don't know what it was called in England, because they were just introducing us here. So they changed the title.

MR. BERGEN: Is that CB-1?

THE WITNESS: CB-1.

Now, could I see the Capitol Album that was put out?

MR. BERGEN: That is Plaintiffs' Exhibit 35.

THE WITNESS: There are no lyrics on it because I did not write the words. And there wa no time, anyway.

THE COURT: Well, why was this so much less elaborate than the --

MR. PRETTYMAN: I can't hear your Honor.

THE COURT: Why was the John Lennon rock and roll so much less elaborate than, say, Walls and Bridges, which has the folding cover which has the little pamphlet inside?

Any reason for that?

THE WITNESS: Partly to do with time factor. But also that's why I was saying to Jay, perhaps they should show a margin cover which is pretty straight.

You don't always have a gimmick or a folder; you don't have to have something in it.

And Roy Kohara didn't come up with something like this, and there was no time.

I knew what the cover should look like but we hadn't decided on the inside.

Q When you say there wasn't any time, Mr. Lennon, can you explain what you mean by that?

A Because Capitol said we have got to go now, you know, and I just went in and cut the thing and sent it to them. There was no time for gimmicks or posters or anything.

THE COURT: Are you saying that you -- well, can you tell me whether or not you intended to have some, as

you put it, gimmicks or posters or -- cut outs or something like that?

THE WITNESS: One of the ideas I had I was finally a version of it I used on the sheet music because I put the sheet music out myself with Lennon Music, and I worked with a guy on designing the book and we did a few little gimmicks that might -- I would have used in there only I didn't have time.

Q Mr. Lennon, is this what you are talking about? (Handing).

MR. SCHURTMAN: May I just have a continuing objection so I don't have to keep getting up, to the witness' state of mind, thoughts, stream of consciousness and so forth?

THE COURT: Overruled.

A This is the sheet music that we put out. And I had wrote a little piece.

THE COURT: Well, let's get that marked.

THE WITNESS: To explain --

MR. BERGEN: Can we mark it? I will give it right back.

xx (Plaintiffs' Exhibit CD for identification.)

Q I am handing you Plaintiffs' Exhibit CD. (Handing.)

Can you tell the Court what that is, please?

A This is what they call sheet music. And in this, your Honor, I use things like --

THE COURT: Now, is this sheet music booklet the songs that were in the record album Exhibit 35?

THE WITNESS: Yes. That's right. And in this I used the pictures of the original stars and pictures of myself when I was about 15 singing the songs when I originally sang them.

And -- like here for instance, there is a picture of Chuck Berry and there is a picture of me, imitating him when I am about 17.

So the designer, the guy and I sat down and we sort of worked out which pictures went with what.

And we just made this book out of it. And we had photographs of the original stars and photographs of me when I was a young performer.

THE COURT: May I see that?

THE WITNESS: Yes. (Handing)

Packaging is half the fun of making an album.

THE COURT: All right. Now, these are all for identification, but I have looked at them. Are you going to offer them?

MR. BERGEN: Yes, I will, your Honor.

THE COURT: All right.

I offer CB1 through 4 and CB 2 in evidence.

THE COURT: Wait a minute. CB1 through 4 --

MR. BERGEN: And CD. CD is the booklet.

THE COURT: Is there any objection?

MR. SCHURTMAN: May I see them?

THE COURT: What?

MR. SCHURTMAN: May I see them?

THE COURT: Yes, certainly.

MR. SCHURTMAN: Thank you. May I inquire as to the purpose for which these exhibits are offered?

THE COURT: Mr. Bergen.

MR. BERGEN: The purpose is to show what Mr. Lennon and the other Beatles and primarily Mr. Lennon, with respect to CD and CB4, what was their practice, normal practice with respect to album covers and how the Beatles and Mr. Lennon gradually took control of the entire production of an album and how as Mr. Lennon has said, how important that is to him as an artist.

THE COURT: And is there any objection?

MR. SCHURTMAN: No objection.

THE COURT: All right, received.

xx (Plaintiffs' Exhibits CB1 through 4 and CD are received in evidence.)

BY MR. BERGEN:

Q Now, Mr. Lennon, you just said a moment ago that there was some kind of a rush.

Will you tell us why there was a rush to get the album out?

A Because Morris' album was being advertised, I presume.

Q Now, had you also had plans to do a television commercial for the rock and roll album?

A Yes, I had a pretty good idea what the commercial was going to look like, whether it had been a commercial for just a TV album or a commercial just for my normal album.

They normally have TV commercials. And it was planned and I think I said a few friends of mine were going to be made available in the West Coast to be on the film.

And I talked to the film director, or the camera man, whatever he is called, and I talked to Tony King of Capitol and it was going to be arranged that Ringo Starr and Harry Nilsson and whoever else they could get that was a well-known face, or name, and have them dance around like dressed in fifties clothes in the background of this commercial.

And I couldn't cover that --

MR. SCHURTMAN: All of this was gone into yester-

day, your Honor.

THE COURT: I think it was. We got this yesterday.

MR. BERGEN: I just wanted to make sure it was on the record.

THE COURT: I don't think so.

THE WITNESS: Well, we couldn't do it anyway because I didn't have time to do it so they had to do it again --Chuck Braverman -- and they made a cartoon --

THE COURT: Look, we are getting --

Q Did you also, Mr. Lennon, have plans to list any credits on the rock and roll album for artists who have appeared on it?

A Yes, another problem was because of the rush I couldn't give credit where credit was due, or name some of the guest artists that appeared on the album. Amongst them, Leon Russell and Jose Feliciano, and quite a few famous names that came to the sessions and performed on the article.

But Capitol, they said they didn't have time to get permission from the different companies. But the list was endless. It was the biggest list I had to deal there with so many people on the album we would have to drop that.

MR. SCHURTMAN: Your Honor, I would again object

to the witness stating what his intentions were. I don't think that is proper evidence.

THE WITNESS: It is normal procedure.

THE COURT: Just a moment, Mr. Lennon.

MR. SCHURTMAN: I mean the man for the last two days has been telling us about his intentions, his thoughts, his dreams. It's facinating, but I don't think it's evidence.

THE COURT: Well, I thought something about that. I haven't gone over the record, you know, in detail to pick this out, but it seems to me that when Mr. Levy was testifying -- well, I don't know whether there was that kind of evidence in or not. My hunch is that there was, but I won't try to -- I can look back over it some other time.

But, here we have a case involving a claim of breach of contract. Now, the basic evidence, as we all know, is if there was anything written down we would look at the writing. There wasn't anything written down so we look at the communications between the parties. But beyond that, we are looking, of course, always to see if there was a meeting of the minds.

We all know from first year law school the objective theory of contracts, we don't have to discuss that. But I don't see how you can say really that the intention of the parties is irrelevant if -- and I don't think we have to,

you know, get a first year contract course in this courtroom, but if somebody -- it's my understanding of the law if somebody has an intention in a contract discussion and conveys some other intention to the other party, you very much go by what is conveyed. But here there is a dispute about what was conveyed. And so I think that the state of mind of the parties has some relevance as indicating, as some evidence, although not conclusive by any means, is to whether or not there was a meeting of the minds and whether there was an agreement.

Furthermore, it may affect credibility, it may provide circumstantial evidence of what was or was not said.

And so for lots and lots of reasons I think that I will receive evidence to some extent about people's intentions.

Furthermore, I understand there is some counterclaims here and in one way or the other it seems to me that it's quite relevant in the case on both the basic issue of the existence of the contract and perhaps on these counterclaims to get an understanding of what Mr. Lennon and Capitol intended to do by way of jacketing and production as an indication of whether the jacketing and production ultimately carried out by Mr. Levy, was in accord with a

contract.

Now, you could go almost on and on. The issues are quite complex here, largely because there was no writing. I mean if you had a writing you wouldn't have to get into all these subtleties and I wish we didn't, but we do. I think the most thorough canvassing of everything will help everybody and what goes for Mr. Lennon goes for Mr. Levy.

If you want to recall Mr. Levy and get into things that you felt precluded, you can do so. But I think you had pretty free rein in examining Mr. Levy anyway.

MR. SCHURTMAN: Your Honor, I don't want to keep hopping up and down. May I just have a continuing objection? I understand you have overruled it --

THE COURT: All right. You have made your record. Thank you.

MR. SCHURTMAN: I won't keep getting up.

THE COURT: All right.

BY MR. BERGEN:

Q Mr. Lennon, other than what you have testified to about the album cover and the Roots album, are there any differences between the Roots album, Exhibit 34, and the rock and roll album, Exhibit 35? (Handing).

A Apart from engineering things, like how they made the tape --

Q Are you referring to the 7-1/2?

A Yes. It's just a different album. A, they have got two tracks on, which I dropped and B, even if I had let them on they were different, my version of Be My Baby, which they left on is different.

Even up to the last minute, I was still editing for two tracks, I finally dropped.

Q What was the other track you finally dropped?

A Angel Baby.

Q You were editing that up until the last minute?

A My version of Be My Baby is different from their version, even if I left it on the album. I cut it in half. It's much better than this.

THE COURT: It would help me if somebody could just get me a list, side by side, of the songs that are on Mr. Levy's album and the songs that are on the Capitol album.

Could you do that?

MR. BERGEN: We will try to do that after lunch, your Honor.

THE COURT: I am not getting too clear a picture of what the differences were and I guess the way to start is just to get those two lists.

We can do it right now, I guess.

THE WITNESS: The basic difference also is that as far as I remember there will be 20 minutes or under on each side of the Capitol albums, which is my normal practice and on this Roots album they have got to be 22 or 23 minutes a side.

They couldn't get it on any other way.

Q Why is that important?

A It's important because the overall quality goes down if you have more sound on an album. An engineer can tell you that. I can't give you the scientific explanation but something about the grooves once you get past 20 minutes you lose quality.

THE COURT: All right now, let's get this organized.

What are the songs in Roots?

THE WITNESS: You want them?

THE COURT: Yes. Let me just make a list.

THE WITNESS: And, of course, they are in the wrong order.

THE COURT: Can I see the other?

THE WITNESS: Yes. (Handing).

THE COURT: All right. You have got 15 songs on Roots, right?

And on your album you have got 13 songs.

THE WITNESS: Yes.

THE COURT: You say that the order is different?

THE WITNESS: Yes. To use an analogy this is like the rehearsal of a Broadway show. They have put the rehearsal out.

MR. BERGEN: Referring to Plaintiffs' Exhibit 34.

THE COURT: All right. Now we have got two qualities. There were different numbers of songs and the order is different and since there are a different number of songs you say that the time on each side is different?

THE WITNESS: Yes. And I just want to point out that even if I had left number 5, Be My Baby on, my version is different from the version they put out.

THE COURT: All right.

And I think the version of Do You Want to Dance is different too.

THE COURT: Just a moment. Well, Be My Baby isn't in your album at all is it?

THE WITNESS: I am saying I didn't take it out, Be My Baby, until the last minute. And the version that I was working on is different from their version. I cut nearly a minute and a half out of it. And a whole verse. So even had I left it on it would have been different. And

Do You Want To Dance is different. Because I think some instrumental part is taken out on my version. And the exact timing on each track will be different. On each one of them. By a few seconds or whatever.

THE COURT: Now, this You Can't Catch Me, did you say yesterday that that's different?

THE WITNESS: Yes, that's very different. Because I have the original Spector's edit on my version.

THE COURT: All right.

BY MR. BERGEN:

Q Are there any other differences you can think of, Mr. Lennon?

A Well, you know, the quality must be different because this was made from a 7-1/2 and this was made from a 15, but I haven't heard it.

THE COURT: Well you haven't listened. All right.

THE WITNESS: But it's a fact of life.

THE COURT: I will tell you, I think if anybody wants to testify about it, you know, the differences in volume and so forth, they are going to have to do it on the basis of having heard both of them.

Mr. Lennon really can't because he didn't hear both.

MR. BERGEN: All right.

BY MR. BERGEN:

Q Now, Mr. Lennon --

MR. PRETTYMAN: Your Honor, may I just make an objection on that point, sir? Mr. Lennon did hear 7-1/2 inch tape that was sent, and he has assumed that the album that was made was made from the 7-1/2. So in that sense he has heard the album. So I just want to object --

THE COURT: I don't know, maybe Mr. Levy did some editing or some engineering.

MR. PRETTYMAN: We have never heard any testimony to that effect.

THE COURT: Well, let's just let it -- it would be a lot clearer to me to have a comparison if you want to make that.

MR. PRETTYMAN: I will take it back because I am reminded there was some --

THE COURT: All right.

BY MR. BERGEN:

Q Now, Mr. Lennon, referring to the Roots album and tne tapes --

A Can I just make a point about the timing? The time?

A Yes.

A I think that will help understand without

listening to it. If there is 25 minutes on the side of an album and there is 20 minutes on another, there has to be a difference in volume the same as if you have a printed page and you have a hundred words on it you can also put 150 or 200 words on it but there is a difference, and there just is a difference.

THE COURT: All right. Presumably someone whose listened and compared them carefully he can testify. All right, Mr. Bergen, let's go.

BY MR. BERGEN:

Q Now, referring to the Roots album and the tape that you gave Mr. Levy, was there some concern about those as far as you were concerned?

A Would you say that again? I was still thinking about the other thing.

Q Did you have some concern and do you have some concern today about the tape that was given to Mr. Levy?

A Yes. I am still embarrassed by the fact that the Angel Baby and Be My Baby are available and are out. They are not tracks that meet with my approval, and it's embarrassing to know that however many there are out they will eventually end up in some bootleg collection, nothing to do with Mr. Levy.

MR. SCHURTMAN: Your Honor, at this point I am

going to object.

THE COURT: Does this relate to a counterclaim?

MR. BERGEN: Yes, it does, your Honor.

MR. SCHURTMAN: The witness is speculating as to what may happen. He is telling us about his personal embarrassment.

THE WITNESS: I met a man the other day who --

THE COURT: Just a minute, please. If this is speculative it will not get anywhere in a counterclaim. But this is what he is presenting to try to back up the counterclaim. All right now, let me hear the answer, Mr. Reporter.

(Record read.)

THE COURT: All right, go ahead, Mr. Bergen.

MR. BERGEN: Your Honor, I would like to make a point that, I don't know whether it is clear, that the reason I am getting into this area is that one of the counterclaims that Mr. Lennon has asserted is under Section 50 and 51 of the New York Civil Rights Law for the unauthorized use of his name and likeness and the appropriation of these songs without his permission.

THE COURT: Yes, I think I understand that. All right.

MR. BERGEN: Thank you.

Q Now, Mr. Lennon -- excuse me?

A Mr. Levy's album is now, according to a friend of mine, a collector's item because it's a rare item, and now I can do nothing about it. The tracks are out and it's out of my control.

Q You mean by "it's out" you mean the public has already bought it?

A Yes. And they can copy it as many times as they want.

Q Now, Mr. Lennon, do you believe that your reputation as an artist has been damaged in any way by the Roots album?

MR. SCHURTMAN: Objection.

A Yes.

THE COURT: Yes, I will overrule that.

A I think it's been damanged by the fact that the thing isout. And it looks so bad and it didn't meet with my approval, and the public was confused as to what was what. And which had my approval and which didn't and I just don't tnink it does me any good at all to have that cheap album going around with tracks I don't like on it. With a lousy picture out of focus, and it's almost so ludicrous it's ridiculous. Even the bootlegs on the market look better than that.

Q Mr. Lennon, referring to the back of Plaintiffs' Exhibit 34, the Roots album, there appears in the lower left-hand corner, a "P" in a circle and it says 1974, Adam VIII, Limited, then there is a dot, John Lennon and Apple Records, Inc. produced from master recordings owned by and with the permission of John Lennon and Apple Records, Inc.

Did you ever give permission --

A No.

Q For that to be placed on the album?

A No.

Q Did you ever give permission for this album to be released by Mr. Levy?

A No, and I didn't ever own it.

Q Did you ever -- what do you mean by you didn't own them?

A Me, I never owned them.

Q Who owns the recordings?

A EMI.

Q Did you ever give permission on behalf of Apple Records, Inc.?

A No.

Q Did you ever give anyone written permission to use your name and likeness in connection with the distribution

or sale of the Roots album?

A No.

Q Have you ever given anyone oral permission to use your name and likeness in connection with the distribution or sale of the Roots album?

A No.

Q Did you ever give or purport to give to anyone written permission to promote, distribute or sell the Roots album or the tape from which it was derived?

A No.

Q Did you ever give anyone such oral permission?

A No.

Q Did you ever tell Mr. Levy or anyone representing the plaintiffs that they did not have to obtain the permission of EMI before producing, selling and distributing the Roots album?

A No.

Q Did you have anything at all to do with the production, sale, distribution or release of the Roots album?

A No.

MR. SCHURTMAN: May we have the word production defined?

THE WITNESS: Well, I think it's almost self-evident that -- I can see your point, Mr. Schurtman, you feel

that he --

MR. SCHURTMAN: He performed the music that's on this album.

THE COURT: I think the question doesn't help. I will strike the question and answer. We have the facts in more details, more specifics than that.

BY MR. BERGEN:

Q Just one last question, Mr. Lennon.

Did you ever enter into an agreement with Mr. Levy or any of his companies on behalf of yourself or Apple Records, Inc. with respect to making a record album for Mr. Levy?

A No.

MR. SCHURTMAN: I object to that as conclusory.

THE COURT: Well, I will allow it.

MR. SCHURTMAN: That's what the whole case has been about for --

THE COURT: I know. I know.

Q One las question. Mr. Lennon, at some point, was a telegram sent to Mr. Levy on your behalf with respect to the Roots album?

A I believe so, yes.

Q I show you a document that's been marked as Defendants' Exhibit CCCC for identification and ask you if

you have ever seen that document?

THE COURT: What is it, quadruple C?

MR. BERGEN: Yes, your Honor.

THE COURT: All right.

A I said I vaguely remember it. I don't remember the wording of it.

Q Did you authorize the sending of this telegram?

A Is this telling him to stop?

Q Yes.

A Yes, yes, I did.

MR. BERGEN: I offer Defendants' quadruple C in evidence, your Honor.

MR. SCHURTMAN: May I see it?

MR. BERGEN: Yes. (Handing.)

MR. SCHURTMAN: No objection.

THE COURT: All right, received.

XX (Defendants' Exhibit CCCC received in evidence.)

MR. BERGEN: I have no further questions of Mr. Lennon, your Honor.

THE COURT: What I am wondering, Mr. Lennon, for one thing is this: Is it not correct that for a period of time after that October 8 meeting with Mr. Levy you were at least -- under your version -- you were at least considering the possibility of enter .g into a contract with Mr. Levy,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BIG SEVEN MUSIC CORPORATION, et al.,

vs.

JOHN LENNON, et, al.,

Defendants.

----------x

Before:
HON. THOMAS P. GRIESA,
District Judge

75 CIVIL 1116
(TPG)

New York, January 22,23,26,27, 1976
January 28, 1976

Vol #16

STENOGRAPHER'S MINUTES

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is that right?

THE WITNESS: Yes, it was on the cards.

THE COURT: Now, let's follow along, I am not making a finding in your favor by any stretch, but I just have to use this framework to ask you some questions --

THE WITNESS: Yes.

THE COURT: Maybe this is covered by the testimony but I am not clear about it.

Did there come a time -- let me put it another way.

Did you do anything to find out from Capitol or EMI whether you could enter into such a contract with Mr. Levy?

THE WITNESS: Well, as I said to him on the first night, A, I don't talk business: B, Here's Howard Seider and C, you will have to talk to EMI.

So I wouldn't get involved, it obviously didn't work because here I am. But that was how I thought of it.

THE COURT: So you are saying you didn't personally follow that up to check with EMI and Capitol?

THE WITNESS: No. No. It's not my business to do the business. I can't do both.

THE COURT: All right.

Now, did there come a time according to your

version of the facts when the possibility and the consideration of doing a deal with Mr. Levy was over, ended?

THE WITNESS: As far as I am concerned the idea of working with Mr. Levy or in the TV package idea, was over the night Al Coury told me I should not do it, the man from Capitol.

Because I was still open to the idea whether it was Mr. Levy or not, of making this a first idea of going on to TV with a new record. But they talked me out of it. I am still intrigued by the idea. I am not convinced.

THE COURT: All right. Well, that's the answer to my question.

Now, we will take a recess and as I understand it according to our ground rules, we will go on to the direct testimony of another witness. Will that be Mr. Seider?

MR. BERGEN: Yes, it will, your Honor.

THE COURT: All right, fine.

Now, I would very much like to have Mr. Cahl come along very promptly.

MR. SCHURTMAN: Your Honor, I did arrange for Mr. Cahl to come back this week. He flew back late at night, I think it was two nights ago. I was hoping to put him on the next day and I understand he received a call from his wife saying that there had been a further medical emer-

gency and he rushed back to Florida the next morning.

I know it sounds incredible but at the moment he's got three close members of his family all in the hospital apparently at least two of them in a critical condition. And I am trying to get --

THE COURT: All right. Now we have obviously got some flexibility because we have --

MR. SCHURTMAN: I am trying to get him back.

THE COURT: We have next week. But just to keep this case in perspective I think that it would help me a lot to hear him just as soon as you and he can conveniently have him here, and I will leave that to you.

MR. SCHURTMAN: Yes, sir.

THE COURT: I think you understand.

All right.

(Recess.)

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MR. PRETTYMAN: Your Honor, Mr. Mennen, who is the president of Capitol, will be in New York on Monday or Tuesday of Next week, and if possible I would like to put him on at that time. I want to alert the plaintiff so they will be prepared.

THE COURT: Mr. Seider.

H A R O L D S E I D E R, a defendant, called as a witness on his own behalf, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BERGEN:

Q Mr. Seider, where do you live?

A 1344 Harper Avenue, Hollywood, California.

Q Are you an attorney, Mr. Seider?

A Yes, I am.

Q In what jurisidction are you a member of the bar?

A The State of New York and the District Courts of the Eastern and Southern Districts of New York.

Q When were you admitted to the bar in the State of New York?

A I believe in February, 1959.

THE COURT: Admitted when?

THE WITNESS: February, 1959.

Q By whom are you employed?

A I am presently employed by United Artists Records and Music Group, Inc..

Q Is United Artists Records and Music Group, Inc. a division of any other company?

A It is a subsidiary of United Artists Corporation, which is a film company and United Artists Corporation, in turn, is a subsidiary of Transamerica and United Artists Corporation, in turn, is a subsidiary of Transamerica Corporation, which is a listed corporation on the New York Stock Exchange.

Q What is your title with United Artists, and I will just use that shorthand term, United Artists?

A I am vice president in charge of business affairs. I am also a director of United Artists Music and Records Group,Inc. I am a director of the publishing company, United Artists Music or UNART, and I am director of the English record subsidiary, United Artists Records Limited.

Q Do you have any other duties with United Artists?

A I also acted as assistant to the president and chairman of the board.

Q During what period of time?

A From the time I began my employment in July, 1972.

Q So you have been with United Artists since July of 1972?

A That is correct.

Q By whom were you employed prior to July of 1972?

A In November, 1971, I left the employ of Abkco Industries, Inc., with whom I had been employed since July of 1967, and between November or the middle of November when I left and July, I was self-employed -- the middle of November, 1971 and July of 1972 -- when I joined United Artists I was self-employed.

Q Is Abkco Alan Klein's company?

A Abkco is a public company which is owned 70 or 80 per cent by Mr. Alan Klein.

Q Was Abkco at one point acting as a business adviser to three of the Beatles and some of their companies?

A Abkco Industries acted as a management company for the Apple group of companies, and that began some time, I believe, in 1969.

Q Can you tell us, are you on the management committee of United Artists Music and Records?

A Yes, I am. We have a management committee.

It is composed of myself, Mr. Mike Stuart, who is the publishing head, Mr. Joe Boss, who is a financial vice president from United Artists Corporation, and Mr. Al Teller, who is the president of United Artists Records of America, which is the domestic record company, and Mr. George Boyle, who is the financial vice president. And, in effect, we review during the period that the board does not meet, we review different matters that go on within the companies.

Q Can you describe to us what you duties are at United Artists?

A The vice president in charge of business affairs, in that capacity I am involved basically in the negotiation of recording artists contracts, the analyzing of proposed transactions, the offering of counter proposals, the negotiation or the negotiating of the terms, overseeing the drafting, although I myself don't engage in drafting any longer, except under unusual circumstances. Then after the contract is signed I oversee the administration of the contract, any problems dealing with any disputes under the contract vis-a-vis legal rights, commissions, clearances, et cetera: also oversee in that capacity the licensing of the musical compositions which are recorded on the various records issued by United Artists Records.

That is in the capacity of business affairs. I also am involved in the publishing end.

Q Can you tell us what you do with regard to the publishing end of United Artists' business?

A In that area it is very similar to the things that I described in the record area, except that it is not my primary responsibility as such. A good of it is done by Mr. Sidney Shemel on the East Coast. But I have been involved, for example, in the publishing area.

United Artists just completed a rather large co-publishing deal, and I was involved for three weeks steadily in the drafting and negotiating of that agreement.

I was in Europe last October and I was involved in the setting up of United Artists Music in Holland. I have been involved with the publishing operation that we have in Germany.

In fact, I get involved in the sub-licensing of the publishing and also on the domestic end, as I said before, in writers' contracts; I have been involved in that.

I remember some time within the last year or so United Artists entered into an administration deal with an associate of Mr. Levy, and I was involved in drafting the memorandum of understanding in connection with that trans-

action.

Q Was that prior to the formal agreement entered into?

A Yes, therewas a memorandum of understanding and a check was issued after the memorandum of understanding was signed.

Q When you say among your duties is the analyzing of proposals, can you describe what you do?

A Well, generally we have an interest in an artist. We solicit the artist, solicit the artist's representative or the artist directly if he has no representative, or you are solicited. And they come and they are looking for a deal or we are looking to make a deal. And they say they are looking for X number of dollars by way of an advance; a Y percentage by way of royalties.

"Are you interested"? Et cetera.

What we do then is we go back and we cost out the deal or the proposed deal. By costing out the proposed deal, we check with the marketing and sales department, trying to analyze what their projections are for the potential sales from this artist. If it is an unknown artist who has never been recorded before, the A and R department will give input as to what they think the artist

might sell, the merchandising and publicity departments would be consulted, we would try to solicit input from them as far as what they anticipate what they would have to expend or have available to expend in connection with taking that artist and bringing him before the public. If it is an established artist, we would estimate what the advertising costs would be. In effect, United Artists is a company which is interested in making a profit.

So, therefore, we want to know how fast it would take us to recoup the moneys that we would pay out both for the advances and recording costs and the manufacturing elements, and then see at what point we would recoup the money or the going into a profit.

Q What happened when a contract is signed with an artist?

A Well, what you do is after a contract is signed with the artist -- and he may be recording at that time while the paper work is generating back a nd forth -- you put out the record when you get the record from the artist.

Q Now, is there some kind of a system of follow-up on the contract?

A Well, if I can just back-up a moment. We get the master tape, generally we get a 15 ips two-track stereo, from which we make the master lacquer. We receive

the tape. Very often in our agreements we have a provision that gives the artist on the delivery an acceptance of the master tape the advance, and we define in the contract delivery, what delivery is, what acceptance is, et cetera, and if it has been approved as acceptable, we perhaps will issue the balance of the advance, assuming that there is that type of situation, and then, again, depending on what the contract terms are, parts are cut or the record is scheduled for release, legal clearances are checked out, the art work is done, cover proofs are submitted, and advertising and promotion program is prepared.

And then hopefully you are in position to put out the record and hopefully when you put it out it will get sales response and the record will sell.

Q Can you tell me what is meant by legal clearances?

A What we have asked United Artists -- and I believe this true of most record companies, for example, the album jacket is submitted to us. On that album jacket we make sure that the copyright notice is Pierre, the mechanical composition, the musical compositions on the album have the correct publisher. We check as to that. We check to see, to make sure that the artists who

are appearing on that have no restrictions. Basically, there is no way of us knowing,except if an artist has appeared on other labels and it is common knowledge. An artist sometimes appears on the record. not as a featured performer, but what you call in business as a side man or a non-featured performer. For example, recently we put out an album by an artist called Dr. John --

THE COURT: This is way beyond what I need. Why don't you start with the events of this case, and then if we need to pick up on some general practices, we can.

MR. BERGEN. I will try to establish his background.

THE COURT: I think I have his background.

BY MR. BERGEN:

Q Mr. Seider, do you know John Lennon?

A Yes, I do.

Q When did you first meet John Lennon?

A I think the first time I met John Lennon was some time in December, 1968. I believe I met John and Yoko at that time.

THE COURT: Who is Yoko?

THE WITNESS: Mrs. Lennon.

I believe the circumstances of that meeting was someplace in the London area. The Rolling Stones,

who at that time --

THE COURT: Wait a minute. He just asked when you first met Mr. Lennon. December, 1968. Okay.

Q Whom were you employed by then?

A By Abkco Industries, Inc..

Q Now, this was prior to Abkco becoming involved with the Beatles and the Apple group of companies?

A That is correct.

Q You are presently associated with Mr. Lennon in a business sense?

A That is correct, through my association with Abkco Industries.

Q Can you describe what your role is with respect to Mr. Lennon?

A At the present time?

Q At the present time.

A I act as an advisor to Mr. Lennon.

Q How long have you been doing that?

A Since the spring of 1973.

Q Is this done with the approval of a United Artists Records?

A Yes, it is.

Q Do you have any written agreement with Mr. Lennon?

A No, I do not.

Q Is there a reason you do not have a written agreement?

A I don't believe that one is necessary.

Q Do you participate in Mr. Lennon's income?

A No, I do not.

Q Are you familiar with the various agreements, and by that I mean, particularly, the EMI, Apple, Capitol agreements with respect to the Beatles?

A Yes.

Q How did you become familiar with those agreements?

A As a result of the representation by Abkco Industries of the Apple group of companies.

Q Can you tell me approximately the year, just approximately how long you were with Abkco?

A I began in July of 1967 and I terminated my employment with them in mid-November, 1967.

Q Can you describe to us what your duties were over the years with Abkco?

A I began in July 1967 --

THE COURT: You were with them until --

THE WITNESS: November, 1971, some time in November, mid November.

THE COURT: You said earlier that they became manager for the Apple group of companies in '69?

THE WITNESS: That is correct.

THE COURT: What was Abkco?

THE WITNESS: Abkco was a company that was the result of a merger between Alan Klein, Alan Klein & Company, Inc., and a company called Cameo Parkway, Inc., and that merger took place, I believe, and stockholder approval was given in September, 1968.

THE COURT: Was that sort of a setup especially to deal with the Beatles and the Apple Company?

THE WITNESS: No.

THE COURT: It was set up and in existence and you were working with it and then you acquired the new clients in 1969?

THE WITNESS: That is correct.

THE COURT: Go ahead, Mr. Bergen.

Q Are you familiar with the 1967 agreement between EMI and the Beatles?

A Yes.

Q I show you a document that has been marked as Defendants' Exhibit B for identification and ask you if tha is that agreement?

THE COURT: This is the EMI agreement, Mr. Bergen?

MR. BERGEN: Yes, the EMI-Beatles agreement of 1967.

THE WITNESS: Yes.

Q Were you involved in the drafting of that agreement?

A No, I was not.

MR. BERGEN: I offer that in evidence.

THE COURT: Any objection?

MR. SCHURTMAN: Only on one point: This is the agreement I have been trying to get in for the last five days. I am glad to see it is here. But certain items are deleted in it and I object to it being offered so long as these items are deleted. Specifically, royalties are deleted, royalty percentages are deleted from the agreement.

MR. PRETTYMAN: The reason they were deleted, your Honor, is that my clients feel that even though the agreement goes back to 1967, that that is very privileged information in terms of their business relationship. This is the kind of information that competitors very much want to get, particularly for any negotiations they might have. It is information that would hurt them perhaps in relation to other artists that they have; it is information which they consider should be protected, ordinarily would be.

THE COURT: There is no magic reason why we have to have a whole contract, and I assume there are dozens of provisions in that contract that I will never need to look at. The issue here is how exclusive it was.

MR. SCHURTMAN: There is another issue -- maybe it is not an issue. I thought the defendants were taking the position that the 12 per cent royalty that Mr. Levy and his company agreed to pay to Lennon and Apple was either too low or unreasonable or improper, and if it is that issue, I would like to know what royalties were set forth in these agreements.

MR. BERGEN: We did not take the position there was any agreement.

MR. PRETTYMAN: We did not take the position that 12 percent was too low or too high. We took the position that, No. 1, it was not discussed at the time, at the October 8th meeting, and, No. 2, at the later meeting, as it has been testified to, it was discussed by Mr. Seider and Mr. Graham and Mr. Levy, and I believe the testimony by Mr. Graham was that Mr. Seider mentioned that 12 percent was John's ordinary percentage, and that if there was any deal that he would want as much as 12 percent. That is my recollection of Mr. Graham's testimony.

MR. SCHURTMAN: Your Honor, in a letter from defendants' lawyers, dated December 15, 1975, to Mr. Kanzer, they agreed to furnish us with unexpurgated, signed originals of Plaintiffs' Exhibits 3, 5 and 6-A, which are the three contracts, I would like at least to see the unedited originals.

MR. PRETTYMAN: May I see the letter?

MR. SCHURTMAN: We can then debate the issue of whether they should be received.

THE COURT: Is this a letter from your firm?

MR. PRETTYMAN: Yes, a letter from me to Mr. Kanzer. They have served a subpoena upon us to produce certain things at the trial, on the first day. We object to do that. We were going to go to court, and instead of that we entered into a stipulation, in effect, and we agreed to have in court on the first day of trial, and we still have it, an unexpurgated version so that if your Honor rules aginst me we would have one to produce.

I certainly did not waive my rights in terms of making objections to letting them see or produce or introduce the unexpurgated version. I save my objections for that until now, and now I make them. But we do have them here if your Honor rules against me.

MR. BERGEN: Your Honor, I don't see how that has anything to do with royalties in this case, and as your Honor pointed out, there are any number of provisions in the agreement, and there are only a few of them that are going to be referred to. And those provisions won't be.

THE COURT: We did have the testimony of Mr. Graham as to the conversation that he had with Mr. Seider and Mr. Levy around the 18th or 19th of November, and they got down to the point, according to Mr. Graham -- this was Mr. Graham's testimony -- where they discussed that Mr. Lennon always get a 12 percent royalty, that this would be 60 cents, and that was about three times what was available for EMI and Lennon. That was his testimony. Now, I suppose that if there is some doubt about that 12 percent, maybe Mr. Schurtman should have the opportunity to see material that bears on that.

am

MR. PRETTYMAN: Well, the picture as I see it your HOnor, and you might want to ask Mr. Seider the question directly as to whether he said at that meeting John usually gets 12 percent and he would want at least that.

But assuming that that's consistent it's their position that they said it at one meeting and someone said it was said at another and we are not having to fight about the figure and therefore I don't see why these various figures in the contract, which we regard as extremely important, confidential information, which would hurt us competitively, to have it out on the public record, should be gone into when we are really not having a dispute about that.

MR. SCHURTMAN: I am sorry. I would like to know whether the 12 percent was low, high, reasonable or unreasonable. And if it turns out that Mr. Lennon was only getting eight percent under this contract, and I have no idea what he was getting, then he might have been eager to make a deal for 12 percent.

I think it has a bearing on the credibility and the state of mind and the intentions of the parties at that October 8 meeting, what he was getting from another company. Because if he thought he had an exception in the contract which entitled him to deal with mail order rights with my

client and if my client offered him 12 percent and he was getting 8 or 9 percent from another company, that's certainly relevant evidence.

THE COURT: May I see the provisions?

MR. PRETTYMAN: Yes. This may take me a few moments. I didn't know this was going to come up.

THE COURT: All right. Couldn't we go ahead somehow?

MR. PRETTYMAN: I do have it.

THE COURT: All right.

Can I have the one that was marked?

MR. SCHURTMAN: This is the one that was marked (handing).

MR. PRETTYMAN: So that you can, by comparing them, see what has been marked and what hasn't (handing).

THE COURT: All right.

Well, are you saying that the part blotted out is the part that the so-called expurgated part --

MR. PRETTYMAN: Yes. The part that's blotted out is the part that we are asking your Honor not to make us reveal, that's correct.

THE COURT: Are these contracts still in effect?

MR. PRETTYMAN: Yes. Howard, would you confirm that?

THE WITNESS: Yes.

MR. SCHURTMAN: Your Honor, it expires, I think, in seven days. Isn't that correct?

MR. PRETTYMAN: Yes. And there are further negotiations going on with the individual artists at this time as I understand.

THE COURT: I will tell you, this is information which is legitimately private. I mean it is not things that have to be filed with the SEC or anything like that.

Now, I think that I will be careful in breaching that privacy. I will admit, as of the present time, Exhibit B, which has these blotted out sections about royalty percentages. I will figure out a way to canvas this question further, Mr.Schurtman, so that we can, I think, deal a little more intelligently with it.

So I am not precluding it for all time right now but just for the present purpose I think I would like to go ahead. There are about two lines that have been cut out as you know, and they are the lines that contain the references to royalty percentages.

MR. SCHURTMAN: You are referring to page 6, I assume?

THE COURT: That's right. It is all on page 6. And let's get -- I can't conceive of the fact we can't go

ahead now, and on the basis of Exhibit B and if it's appropriate later to substitute the unexpurgated version, I will do so.

MR. SCHURTMAN: Just to make sure we don't forget it, I would like my objection to stand for the time being.

THE COURT: It will stand and I think maybe we could have a conference in the robing room right after lunch and work this out a little better.

All right?

MR. PRETTYMAN: Why don't you keep both of those, your Honor?

THE COURT: No, I will give those all back to you. All right, Exhibit B is received under those circumstances.

xx (Defendants' Exhibit B received in evidence.)

BY MR. BERGEN:

Q Mr. Seider, Exhibit B, Defendants' Exhibit B in evidence, is that the agreement which provides for the Beatles' as a group and individually, to record exclusively for EMI?

A May I see it, please?

Q I hand you the agreement. (Handing)

MR. SCHURTMAN: Wait a minute. I am sorry.

Would you read the last question, please.

THE COURT: Yes, let's have it read.

(Record read.)

MR. SCHURTMAN: Your Honor, I object.

THE COURT: Yes, I will sustain that.

MR. BERGEN: Your Honor, Mr. Seider is a man who is familiar with this agreement. He has testified to it. I am just trying to get what his understanding was of the agreement and what he opted under --

THE COURT: That is not the question.

MR. BERGEN: Excuse me?

THE COURT: That isn't the question. You just threw in this conclusion in a kind of incidental way. That's the whole case.

Q Can you tell me, Mr. Seider, what basically Exhibit B, Defendants' Exhibit B in evidence, provides?

MR. SCHURTMAN: Your Honor, I object to parol evidence at this point. There has been no laying of a foundation; there has been no showing of ambiguities. You can't simply have a lawyer sit up there, especially a defendant, and tell you what he things a contract says. The contract is in evidence. If Mr. Bergen wants to read portions of the contract to your Honor, I have no objection to it. That's what I tried to do several days ago when they

stopped me. But I am not going to have this witness sit here, at least without objecting, and have him tell you what he thinks the contract means. That's for you to decide.

THE COURT: Well, we are back at this area. I don't want to have the record get messed up with improper testimony. You know, we have tried to draw a kind of line so far and I am not sure exactly what line we have drawn, but I think that I have permitted witnesses to testify as to their ur er -- I have permitted Mr. Lennon to testify as to his understanding of his obligations because that was part of his state of mind in going into these negotiations.

Now Mr. Seider was a participant in these negotiations and I believe I would permit him to testify as to his understanding at the time.

Now, whether he -- it's going to be at all helpful for him to give me a kind of lawyer's analysis now, that's a matter for briefing and argument.

I would just as soon have your analysis, you know, you argue it. What difference does it make? He wasn't a party to it -- he didn't help draft it so I don't know what his argument about it would mean.

MR. BERGEN: Your Honor, I am not asking him for an analysis as a lawyer. I am asking him just to tell me what his understanding was of the agreement --

THE COURT: But that really --

MR. BERGEN: -- that he operated under for years with Abkco and as an advisor to Mr. Lennon.

THE COURT: I don't want to quibble with you but that really wasn't your question. Now, I will permit you to ask when you get into the transactions to which he was a witness or a participant, I will permit you to ask relevant questions about his understanding and his state of mind. But there is a way to ask that and this isn't it. I am not interested in his state of mind on January 22, 1976. I am interested in his state of mind on October 8, '74 or events at times like that.

BY MR. BERGEN:

Q Mr. Seider, I show you a document that has been marked as Defendants' Exhibit D for identification and ask you if you can identify that document? (Handing).

A Yes.

Q What is that document?

A This looks like the license between EMI and Apple Records, Inc., New York.

Q What is the date of that agreement?

A I see typed in, date, September 1, 1969.

Q Were you involved in the drafting of that agreement?

A Not in the drafting.

MR. BERGEN: I offer Defendants' Exhibit D in evidence, your Honor.

THE COURT: Any objection?

MR. SCHURTMAN: The only objection is that it's barely legible. I can't read a good part of it. Would it be possible to get a clearer copy?

MR. BERGEN: I think we produced other copies to you. Maybe the ones we produced earlier in the case --

THE COURT: Well, let me see it. Can I see that?

MR. BERGEN: Yes, your Honor. (Handing)

MR. SCHURTMAN: If the Court's copy is clearer than mine I will just withdraw the objection. I can't read mine.

THE COURT: Well, I will tell you, this typewriter had trouble with capital "E". It had trouble with caps, and I think you can either substitute, or just ink in so it isn't too hard to read, just ink in some of the bad words. It's kind of a bad copy though so do your best to get another one, could you?

MR. BERGEN: Yes, we will, your Honor.

THE COURT: Or just ink it in.

MR. SCHURTMAN: Your Honor, except for legibility, I have no objection.

THE COURT: I am sure that's right. We will try to get it legible. All right, Exhibit D is received.

xx (Defendants' Exhibit D received in evidence.)

MR. SCHURTMAN: Let me just check one point, your Honor.

May we have a stipulation on the next to last page, that is the signature of John Lennon?

MR. BERGEN: So stipulated.

MR. SCHURTMAN: As authorized signatory for Apple Records, Inc.?

MR. BERGEN: I don't believe it says Apple Records, Inc.

MR. SCHURTMAN: As best I can read it.

MR. BERGEN: All right.

THE COURT: All right, it's stipulated what?

MR. SCHURTMAN: That the agreement is signed by John Lennon as authorized signatory on behalf of Apple Records, Inc., that seems to be the only signature except for the EMI signature.

THE COURT: All right, fine. All right, go ahead.

BY MR. BERGEN:

Q Now, Mr. Seider, I show you a document that has been marked as Defendants' Exhibit C-2 for identification and I ask you if you have ever seen that document (handing)?

A Yes.

Q Can you tell the Court what that document is?

A This document is the manufacturing and distribution agreement that was drafted in, I believe the first week in September, first or second week of September.

THE COURT: Of what year?

THE WITNESS: 1969.

Q What is the date of that agreement?

A It's an agreement made as of September 1, 1969.

Q Was that the same date as the EMI-Apple agreement that was Defendants' Exhibit B?

A May I look at the exhibit?

THE COURT: You said December or September?

THE WITNESS: September.

MR. BERGEN: September.

THE COURT: And it was dated as of what?

THE WITNESS: As of September 1. This agreement was made, I believe, the first or the second week of September.

THE COURT: I must have made a mistake. What is Exhibit D, December 1, '69 or --

THE WITNESS: September.

MR. BERGEN: Exhibit B, your Honor.

THE WITNESS: No, he is referring to the

EMI-Apple license.

MR. BERGEN: I am sorry.

THE COURT: What was the date of that, please?

THE WITNESS: There is a typewritten date over here, September 1, 1969.

MR. PRETTYMAN: Same date, your Honor. Same date --

THE COURT: All right. I made a mistake. All right.

Now, who is Exhibit C-2 between?

THE WITNESS: Capitol Records, Inc., Capitol Records Distributing Corp. and Apple Records, Inc., a New York corporation.

THE COURT: All right.

BY MR. BERGEN:

Q Mr. Seider, were you involved in the drafting of Defendants' Exhibit C-2?

MR. BERGEN: Oh, I am sorry. I offer it into evidence.

THE COURT: Any objection?

MR. SCHURTMAN: I have several objections. The agreement refers to a number of schedules, schedules referred to on page 7 --

THE COURT: Can I see the Exhibit C-2?

All right. Now what page, Mr. Schurtman?

MR. SCHURTMAN: On page 7 there is a reference to a schedule, at the top of the page, schedule X and schedule Y. On page 10 there is a reference to Schedule A; page 20 there is a reference to a schedule B.

THE COURT: What about the schedules? Are the schedules necessary?

MR. SCHURTMAN: The schedules, if I may --

MR. BERGEN: Your Honor, I think I can solve the problem.

THE COURT: All right.

MR. BERGEN: The reason we put in C-2 is that the original, or that document that we produced, or that was produced to the Plaintiffs' earlier in the case, had only a conformed signature by Mr. Lennon at the end. I would like to offer in evidence Defendants' Exhibit C-1 which has the schedule attached and which has the conformed signature. C-2 nas John Lennon's signature on the back of it.

MR. SCHURTMAN: Your Honor, we are now in the reverse situation that we had with that assignment agreement between Mr. Lennon -- because you kept a schedule out because --

THE COURT: You are always trying to cite precedent from what happened in earlier parts of the trial.

MR. SCHURTMAN: Yes, your Honor, because --

THE COURT: I am trying in the best way I can to face each issue as it comes along, and --

MR. SCHURTMAN: Then I will make my --

THE COURT: -- and I hope the rulings have some constantcy but I don't purport to just trace in my mind, you know, precedents in an ironclad way. Now, let's face this issue and not continually harp back to everything that happened before.

MR. SCHURTMAN: Well, this issue is that we had originally demanded the production of a complete agreement. We were furnished with an agreement without schedules. The defendants have now offered the agreement again without schedules. When I objected they have now come up with a schedule that I have never seen.

Now, I object to it on that ground. First that there was insufficient compliance with discovery demands and secondly, that the schedule has now suddenly made an appearance when there is no evidence that the schedule was in fact annexed to the agreement. I am sorry if I cite prior precedent, but I believe that on this type of an issue the ruling should be consistent. It's the identical issue.

MR. PRETTYMAN: Would your Honor like to defer this matter until after lunch? The reason I suggest it is

that I am trying to get hold of the originals. We have an interesting situation here in regard to one of the three contracts and that is that my company never got back an original from Mr. Klein.

THE COURT: Your company being what?

MR. PRETTYMAN: Capitol. And so we do have two originals and I will be happy to produce those after lunch. We also have the copy which the companies operated on even though they didn't get the original back, I will have that after lunch.

Maybe when we can look at these three things together it may help resolve the present problem as to whether there was a schedule attached or not and so forth.

THE COURT: Well, I would assume that there is some contractual framework which is very crucial to this case involving EMI and Capitol and Apple Records and Mr. Lennon.

Now, let me just try to understand what the parties contend about the framework, since the defendants are putting these things forward at the present time.

I take it that you contend that this exhibit B is a basic exclusive agreement giving EMI the exclusive rights to distribute records made by the Beatles, is that right?

MR. PRETTYMAN: Correct.

MR. BERGEN: That's correct, your Honor.

THE COURT: All right.

Now, according to your contention what is the significance of Exhibit D?

MR. PRETTYMAN: Exhibit D in effect took the rights that EMI had world-wide and carved out North America and passed along to Apple the rights which EMI had throughout the world, but reserving unto EMI the right to approve any attempt by Apple to give those rights to anybody else except Capitol.

THE COURT: All right. Let me get this straight. You are saying that this Exhibit D, EMI took its exclusive recording rights and gave some of them -- when you say some of them you mean the rights for the United States?

MR. PRETTYMAN: North America, yes.

THE COURT: North America, you said. All right.

MR. PRETTYMAN: It gave all that it had to Apple.

THE COURT: As far as North America.

MR. PRETTYMAN: As far as North America is concerned only but reserving --

THE COURT: Subject to --

MR. PRETTYMAN: Subject to its right to approve any attempt by Apple to give any rights to anyone other than Capitol. And contemporaneously with that contract --

THE COURT: Wait a minute. Let me just get this. In theory if you just looked at Exhibit D, you are saying Apple couldproduce and distribute records of the Beatles in North America, right?

MR. PRETTYMAN: Yes, that's correct. Throughout the world.

THE COURT: What?

MR. PRETTYMAN: Throughout the world. If you look only at B.

THE COURT: D.

MR. PRETTYMAN: Oh, D, I am sorry.

THE COURT: EMI gave to Apple the ability to produce and distribute records in North America.

MR. PRETTYMAN: Correct.

THE COURT: And you contend that it provided that if Apple was to give rights to somebody else to produce and distribute it had to be Capitol --

MR. PRETTYMAN: Unless it got EMI's specific permission.

THE COURT: All right. Now, what's the significance of C-2 according to your contention?

MR. PRETTYMAN: Contemporaneously with that transaction Apple gave all its rights to Capitol. In other words, in effect the rights passed from EMI through Apple to

Capitol.

THE COURT: All right.

MR. PRETTYMAN: Now, there was one exception in that contract that's relevant here, and this is where we get into the argument between counsel. There was a reference --

THE COURT: In what agreement?

MR. PRETTYMAN: In C-2.

THE COURT: All right.

MR. PRETTYMAN: There is the reference to an exclusion in regard to sales, mail order sales and sales direct to consumers and as your Honor will hear that came about because of the desire of Mr. --

THE COURT: Well, I --

MR. PRETTYMAN: I will just give you some more so you understand, that has to be explained.

THE COURT: All right.

MR. PRETTYMAN: Because it was Mr. Klein's desire to negotiate for Club rights and without this exclusion in it --

MR. SCHURTMAN: Your Honor --

MR. PRETTYMAN: -- since all of his rights would have passed directly through to Capitol, only Capitol would have been able to deal with what we call club rights, which is commensurate with direct mail sales.

THE COURT: And that's in the language in Exhibit C-2?

MR. PRETTYMAN: C-2. And consequently we have to explain to you what the actual practice was of the parties, what theintent was of the negotiators and what everybody understood that particular phrase to mean. And it did not apply to this particular situation.

THE COURT: All right. Now let's go to Mr. Schurtman.

Do you agree basically that Exhibit B just taken alone gives EMI the exclusive rights to distribute recordings of the Beatles or any of them?

MR. SCHURTMAN: Let me find out which one B is.

THE COURT: B is the 1967 agreement.

MR. SCHURTMAN: B is the '67 agreement. I think essentiall that's correct, your Honor. I would have to check out but for purposes of this case --

THE COURT: All right. Then do you agree that Exhibit D was a document in which EMI gave up its exclusive rights as far as North America and gave them up to Apple Records, Inc.?

MR. SCHURTMAN: I don't agree with it in that form.

THE COURT: What do you contend Exhibit D did?

MR. SCHURTMAN: Exhibit D licensed the rights to Apple in North America. The word "licensed" is important. We are now getting into a technical area --

THE COURT: All right. You don't disagree with the word licensed, do you?

MR. PRETTYMAN: Well, I don't know whether he and I would so interpret it the same way but --

THE COURT: All right, Mr. Schurtman, go ahead. Exhibit D. What do you contend?

MR. SCHURTMAN: Well, I will quote from the defendant's own statement "by agreements dated September 1, 1969 EMI granted an exclusive licensed to Apple to manufacture and distribute Beatles recordings in the United States, Canada and Mexico."

THE COURT: Well, do you also agree that there was a provision or provisions that Apple could not license to other parties without EMI's permission unless such other party was Capitol?

MR. SCHURTMAN: No.

THE COURT: You don't agree with that?

MR. SCHURTMAN: I don't agree to that because that's not what the agreement says.

THE COURT: What do you say it says?

MR. SCHURTMAN: The agreement says and again I

quote from their own statement of facts "None of Apple's rights under the license with EMI was assignable without EMI's consent."

Now, one of the issues that will be before your Honor --

THE COURT: Wait a minute. So you are saying that none of Apple's rights could be assigned or transferred without --

MR. SCHURTMAN: Assigned. These were lawyers drafting the agreements. They knew the difference between a license and an assignment.

THE COURT: All right. I just want to get what the distinction is and we are not just quibbling.

MR. SCHURTMAN: No we are not quibbling. It's an important --

THE COURT: They say that under Exhibit D --

MR. SCHURTMAN: D is which one?

THE COURT: The 1969 agreement between EMI and Apple.

MR. SCHURTMAN: Right.

THE COURT: The defendants say -- apparently you are in agreement basically that this was a license to Apple for North America.

MR. SCHURTMAN: Right.

THE COURT: However, they say that for Apple to assign its rights to another party it could do it without EMI's consent if that other party was Capitol but had to have EMI's consent if that other party was someone other than Capitol, right?

MR. PRETTYMAN: Precisely.

THE COURT: All right. Now do you agree or disagree with that proposition?

MR. SCHURTMAN: No, but in addition to that there is this exception that we have referred to.

MR. PRETTYMAN: Did you think exception doesn't--

THE COURT: What's your argument about this thing I brought up last?

MR. SCHURTMAN: Here's my understanding of the agreement, sir, very briefly.

Originally EMI had all the worldwide rights.

THE COURT: Right.

MR. SCHURTMAN: Then they made a deal with Apple and they said to Apple in effect, and I am paraphrasing, we will license to you the North American rights, United States, Canada and Mexico, but we will do so on two conditions:

Condition number 1, that you enter into an agreement with Capitol, which is our American subsidiary,

it's a subsidiary of EMI; and

Condition Number 2, that you don't assign any rights under this agreement to others.

Now,at that point Apple entered into a license agreement with Capitol as rquired by the EMI license, and Apple in effect, licensed everything to Capitol with certain exceptions. One of the exceptions was mail order rights, a separate exception, which appears in a different part of the agreement is club rights. Now, I know the defendants' counsel have been equating the two but they are two completely separate provisions in that agreement.

THE COURT: Well it seems to me for the purpose of this case, and there may be other problems for other cases but for the purposes of this case, the real dispute is in the meaning of Exhibit C-2, is it not?

MR. PRETTYMAN: No, sir. And let me explain to you why.

This is extremely important.

THE COURT: All right.

MR. PRETTYMAN: Our position is that before the-- you have heard all this testimony about you have to go get EMI's approval and everybody says you have to go get EMI's approval.

The reason for that is that you never even get

to the C-2 problem if you are trying to give a third party right because of that assignment clause. In other words, regardless of what C-2 said, if it was written in green it wouldn't have any relationship to the fact that Apple, even if it had all these rights, could not give them to a third party --

THE COURT: In other words, you are saying that's why they kept referring to needing EMI's consent rather than needing Capitol's consent.

MR. PRETTYMAN: Exactly. Because you never get to Capitol unless you get EMI's consent when you are trying to give rights to third parties.

THE COURT: So we have a dipuste about the meaning of Exhibit D, whether there was --

MR. PRETTYMAN: No, Exhibit B. I am sorry, Exhibit D, you are quite right.

THE COURT: In Exhibit D, we have a dispute as to whether it provided for licensing to other people on EMI's consent.

MR. PRETTYMAN: Yes. To pin it into the facts of this case, it's a question of whether under that agreement Apple, even if it had the rights which of course we say it didn't, could go to Mr. Levy and say, here we have got this album, you take it and do with it as you want to and despite

this anti-assignment clause you don't have to get any permission from EMI.

THE COURT: Well, according to Mr. Schurtman's position you couldn't get it -- I mean Capitol had everything--

MR. PRETTYMAN: That's the second point.

THE COURT: -- except the club rights --

MR. SCHURTMAN: Mail order rights and certain other exceptions which are not pertinent to this case.

THE COURT: And your position is that whatever Capitol didn't have Apple could license without getting EMI's consent. That's what you are saying.

MR. SCHURTMAN: That's exactly it.

THE COURT: All right. Well at least I get the issues. Now, let me say this as far as introducing these documents, I have got to assume that the parties can manage to get into evidence some proper version of Exhibit C-2, otherwise it's going to be very difficult to decide this case.

MR. SCHURTMAN: I can get it in but I am not sure they can.

No, my point, your Honor, is simply this, on the schedules, I would like to see them because I think they may contain some pertinent information. We demanded them, I think a year ago and we still haven't seen them. But on the

subject of objection, I will cite you prior precedent, your Honor. I would ask you to reverse what was then a very technical ruling on the schedule annexed to our --

THE COURT: I don't recall that it was technical at all. I recall it as the result of simply uncertainty as to whether -- I mean there wasn't any foundation as to what that sheet of paper meant.

Now, I am not --

MR. PRETTYMAN: Can we help you there, your Honor?

THE COURT: Wait a minute. I am not going to go back to the prior ruling on this point. I am concerned with getting authentic -- an authentic copy of this Exhibit C-2 agreement with the foundation properly laid.

Now, in other words, if we have part of an agreement where the foundation is properly laid, well, we have got part of an agreement. If other parts to that agreement cannot be found or cannot be authenticated this may give us a problem.

I don't know at this point. I think you had better take the lunch and canvas the situation as far as these schedules -- sometimes the schedules are meaningful, sometimes they don't mean a blessed thing.

MR. GRUMBACH: Your Honor, may I make one additional point on the subject of the agreements that I think has

not been articulated and ought to be kept in light. That is this:

I think it's crucial for you to recall that the first thing that counts here is not what the agreements precisely said but what Mr. Lennon, Mr. Seider understood them to mean at the October 8 meeting.

THE COURT: We are not getting into that kind of argument. We are trying to understand what the issues are about these -- Mr. Grumbach, we are trying to understand the issues about the documents and ultimately see what needs to get into evidence. That's the only reason I have been hearing about the issues on the agreements, so I can get a little better understanding when I have to make evidence rulings.

So you canvas this over lunch and we will come back to it and I would like to meet the lawyers at 2:15 in the robing room and we will talk further about this.

MR. PRETTYMAN: Can we withdraw an objection which we have?

THE COURT: What's that?

MR. PRETTYMAN: We have been ordered to expedite things in order to get everything before your Honor that week. We will withdraw the objection that we made to the attachment to Mr. Levy's exhibit.

THE COURT: All right.

MR. PRETTYMAN: And allow that in.

THE COURT: All right. That expedites that. 2:15.

MR. SCHURTMAN: In that case all I want to do is see the schedules and at that time -- I will not object to the fact that the schedules were not annexed. I just want to see what they are.

THE COURT: All right.

(Recess at 1:10 p.m.)

AFTERNOON SESSION

2:15 p.m.

(In the robing room.)

THE COURT: Let's try to get squared away on that Exhibit B, I think it is, that was in expurgated form.

MR. PRETTYMAN: Your Honor, I had hoped by now to have the originals, they are on their way down here. However, over the lunch period I was reminded why the schedule was not included.

THE COURT: The royalty thing. The '67 EMI agreement. I think it is Exhibit B, isn't it?

MR. BERGEN: That is correct, your Honor.

MR. PRETTYMAN: What I am saying relates to this, too, and that is that the schedule that was excluded was excluded, I am reminded, for the same reason, that is by using that schedule you can figure out royalties on it.

MR. BERGEN: That's the schedule in Exhibit C.

MR. PRETTYMAN: Exhibit C. So all I am saying is we have the same problem in both cases.

THE COURT: The three exhibits that we have been considering are B --

cmbr 2

MR. PRETTYMAN: Which is EMI Beatles.

THE COURT: In 1967, between EMI and Beatles. Then you have got Exhibit D.

MR. BERGEN: D, right.

MR. PRETTYMAN: That's EMI-Apple.

THE COURT: That's 1969, EMI and Apple.

MR. PRETTYMAN: And C-2.

THE COURT: C-2 is Apple --

MR. PRETTYMAN: '69, Apple-Capitol.

THE COURT: Now, on the basic point of whether the contractual provisions about Mr. Lennon's royalties should go into evidence, I have been turning over in my mind during lunch what those provisions might relate to, but I guess I ought to go back to you, Mr. Schurtman, and let you articulate it. Why do you feel, again, why do you feel you need them?

MR. SCHURTMAN: Yes, I need them to show what Mr. Lennon's normal royalty rate was to determine whether at that meeting at Club Cavallero where Mr. Levy offered him 12 percent, this was rather a ridiculous offer which Mr. Lennon wouldn't even consider, or this was such a generous offer that Mr. Lennon would have jumped at the chance, or that it was in the same range as what he was getting so that the deal made sense at least from an economic standpoint.

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MR. PRETTYMAN: Our reply to that, your Honor, would be --

MR. BERGEN: May I say something first?

Your Honor, Mr. Lennon says that that figure wasn't even mentioned that night.

Secondly, I don't see how it makes any difference whatever Mr. Levy says he said to Mr. Lennon, because Mr. Lennon says first of all there wasn't any figure mentioned and, secondly, whatever deal, you know, might have been discussed as far as he was concerned, they had to go to EMI.

MR. PRETTYMAN: Evenmore than that, if I may add to that, your Honor, even assuming Mr. Schurtman's view of the facts, Mr. Levy testified, as I recall, that he asked what the normal royalty was, and was told that it was 12 percent. And it was at that point that he offered 12 percent.

Now let's assume that it was 1 percent or 20 percent. Since he asked and was told it was 12 and he then offered 12, I don't see what difference it makes.

THE COURT: Well, let's take some outlandish figure, let's assume it was 1 percent.

MR. PRETTYMAN: Right.

THE COURT: Let's put that aside,

let me come back to that, but let me ask you something before.

Is it the 19 -- well, let me start again. The 1967 agreement provides for royalties payable by EMI to the performer or performers: right? Right?

MR. BERGEN: Yes.

MR. PRETTYMAN: Yes.

THE COURT: The reporters don't record nods.

MR. PRETTYMAN: I am sorry, I forgot he was recording.

THE COURT: Now, as far as any royalty that might be payable by Capitol -- is there another arrangement that provides for royalties by Capitol?

MR. PRETTYMAN: I would have to go back and check this. My very cursory reading, and my memory may probably fail me, would indicate Capitol pays something to Apple, am I right?

MR. BERGEN: You are talking about the 1969 agreement?

MR. PRETTYMAN: Yes.

MR. BERGEN: The purpose of the 1969 agreement, one of the purposes was that the '69 EMI-Apple-Capitol agreements translated and transmitted into the corporate form of Apple the same royalty from the '67 agreement.

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In other words, one of the purposes was that the royalties would not go to the performers individually. It would really go into the corporate coffers --

THE COURT: It was the same royalty.

MR. BERGEN: But it was basically the same--

THE COURT: They end up with a different figure, or different royalty percentage from the '69 agreements than what is provided in the --

MR. PRETTYMAN: The reason I can't answer that --

MR. BERGEN: I could double check that in a couple of minutes, but I do not believe --

THE COURT: Why don't you double check that?

MR. PRETTYMAN: Your Honor, I am sorry that we cannot give you a simple answer, but we have checked quickly with Mr. Seider, and there simply has to be testimony on this because it was a very complicated procedure.

For example, it related to approval by The Bank of England, by the Court, it changed with the breakup of the Beatles.

It is just more complicated, and we can't just look at one line of the contract and determine it.

THE COURT: Well, all right, let's assume,

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andlet's pick the same ridiculous example, that the 1967 agreement provided for a 1 percent royalty --

MR. PRETTYMAN: Right.

THE COURT: Now, these are the things that run around in my mind in determining whether that is something that Mr. Schurtman should have and be able to use for whatever purposes in this trial.

I have the testimony of Mr. Levy about the discussion of 12 percent at the October 8th meeting, and I know that that may be contradicted by Mr. Seider, but I haven't heard Mr. Seider yet, and anyway I don't, you know, adopt -- well, Mr. Levy's testimony is in record on that point, and I haven't found against Mr. Levy in any way.

Now, then we have the testimony of Mr. Graham, and I have got the record before me, at pages 799 and 800, where this relates to the meeting of November 18th or 19th, 1974, where Mr. Graham says that after conference between him and Mr. Levy and Mr. Seider when they were talking about who would pay what out of the $4.98 sale price, Mr. Graham said that Seider said that John's normal royalty rate, meaning Capitol rate, is 12 percent and that he would not do this for less than 12 percent, and so forth.

At page 800 I asked again about this comment by Mr. Seider, and Mr. Graham said that Seider said that

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John's normal royalty rate is 12 percent, which would be 12 percent of $4.98, or 60 cents.

Now, let us assume that Exhibit B has, in fact, has a different percent like 1 percent. I guess if I were Mr. Schurtman I would want to know it because it might indicate a lot of things. It might indicate, as he says, that the 12 percent was very attractice. It might indicate that somebody was deceiving Mr. Levy. I suppose there are other ramifications.

Now, I would want to know on the other hand whether there were provisions in the 1969 contracts which had the effect of creating a different percentage, but whatever it netted out if it was a lot lower than 12 percent it might have these ramifications. I can't understand how it is just completely irrelevant.

Now, let us suppose that it is much higher. Let's just take another hypothesis, and again a ridiculous hypothesis, let's suppose that the '67 agreement provided for 25 percent or 30 percent, or -- let's say 30 percent. Then that might create a problem for the plaintiff.

You tell me why you would want to know it was 30 percent. How is that going to help you?

MR. SCHURTMAN: Well, I am not sure it would help us on the point on the October 8th meeting as to why

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the deal was attractive for Lennon. But I would certainly be curious as to why Mr. Graham and Mr. Seider have testified that they said 12 percent is the normal royalty rate and they were negotiating on thatbasis.

I mean, these witnesses are testifying under oath,and it may raise some questions in your Honor's mind about their credibility.

THE COURT: So even though it might be a disadvantage to you on one argument --

MR. SCHURTMAN: It might help me in another.

THE COURT: In other words, you want to hear the fact out so that --

MR. SCHURTMAN: Whatever it may --

THE COURT: For whatever it is worth.

MR. SCHURTMAN: For whatever it is worth.

Now, if you want to work out some sort of a protective provision --

MR. PRETTYMAN: That's what I was going to suggest.

MR. SCHURTMAN: So that only the attorneys and your Honor know what the rate is, and I am certainly agreeable to that. I am not trying to get involved here.

THE COURT: I am going to say to you,

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Mr. Prettyman, I think it should be -- I think Mr. Schurtman should know what that provision is, and I think we should -- frankly it is of interest to me.

MR. PRETTYMAN: Sure. I understand.

THE COURT: So let's leave it. What kind of a protective provision can we have?

MR. PRETTYMAN: I would suggest, too, that we --

1A pm

MR. SCHURTMAN: I suggest that the rates be shown to counsel and that it be shown to the Court and that we place it in a sealed envelope marked as an exhibit.

MR. PRETTYMAN: Yes. That goes all right, but then how about questioning about it? That's the only thing.

MR. SCHURTMAN: Until I see the rate I don't know what questions I want to ask.

MR. BERGEN: That's the problem, your Honor.

THE COURT: I think we have got to take it one step at a time. I think we have got a litigation here which everybody is fighting very hard over and you know nuances and all can have an effect. I couldn't in good conscience keep that out of the case.

And if Mr. Schurtman has a reason to question a witness he will have to question him.

And if it means bringing back a witness he will have to be brought back. I just can't help it. But maybe there is a way to even temporarily seal part of the record.

MR. SCHURTMAN: Surely.

THE COURT: But we can handle it. But we have got to get to the merits.

MR. PRETTYMAN: I am not afraid of anyone in the courtroom. I would prefer that it not be put on the public record so any other company can just come down and find it.

THE COURT: I think you will have the maximum possible cooperation on protection but let's get it -- now the mechanics are -- what do you now have with you?

MR. PRETTYMAN: I now have with me the original copies of two of these. That is, the January 26, '67 agreement between EMI and the Beatles, and the September 1, '69 agreement between EMI and Apple. Now the reason I don't have an original of the '69 agreement between Apple and Capitol is that Mr. Klein never sent us one. And so we --

THE COURT: Well, let's take it one step at a time.

MR. PRETTYMAN: I prefer not --

THE COURT: We don't have to use the ribbon original do we?

MR. PRETTYMAN: I really would rather they not be marked and I have to keep custody of them.

THE COURT: Well, where are the actual exhibits B and D?

MR. BERGEN: I have C-1.

THE COURT: Let's get them out of the courtroom.

MR. PRETTYMAN: And here's the copy of C-1 with the schedule which I take it you are also ruling that they should see?

THE COURT: Well, let's hold off on that.

MR. PRETTYMAN: I might say for the record that although this is a copy that it was the one which Capitol did operate under and which Apple operated under.

THE COURT: All right.

MR. PRETTYMAN: They operated under the copy as if it were --

THE COURT: You are talking about what, C-1?

MR. PRETTYMAN: C-1.

THE COURT: All right.

Now, let's start with B.

Now, Mr. Prettyman.

MR. PRETTYMAN: Yes, sir.

THE COURT: I would suggest we can substitute the unexpurgated version for Exhibit B or we can have a B-1. Where is the unexpurgated Xerox of the '67 agreement?

We had better get that. Is there any reason to want the expurgated version part of the records?

MR. SCHURTMAN: No.

MR. PRETTYMAN: Just substitute, as far as I am concerned.

THE COURT: You know it might, in the long run, be of use to have the expurgated version and the unexpurgated version both in..

MR. PRETTYMAN: All right.

THE COURT: Because maybe you will want to put one under seal.

MR. PRETTYMAN: I see. That's a good idea. Now, we are talking about '67? 1967?

THE WITNESS: 1967.

MR. PRETTYMAN: All right, I give you an unexpurgated copy plus the original.

THE COURT: I don't need the original. Now we will mark the unexpurgated version of the '67 agreement as Defendants' Exhibit B-1 and we will receive that into evidence.

MR. PRETTYMAN: Will you hand that to me just for a moment, your Honor? That doesn't look like an exact copy.

MR. GRUMBACH: This copy that you handed the Judge was made from our original.

MR. PRETTYMAN: I see. Which was a retyped one from the EMI original?

MR. GRUMBACK: Both parties had an original and we made it from our original, I believe.

MR. PRETTYMAN: It looks like --

THE COURT: Can you get together and decide what document you want? It is not of any importance to me.

MR. SCHURTMAN: Why don't we do it -- shall we

do it during the recess?

MR. PRETTYMAN: Just so long as they --

THE COURT: All right.

For now we are going to mark a document as Defendants' Exhibit B-1 subject to a substitution if this proves to be inaccurate. And we will receive this into evidence and I will give this back to --

MR. PRETTYMAN: Which document is that, your Honor, that you have just identified?

MR. BERGEN: The '67.

MR. PRETTYMAN: What did you just identify?

THE COURT: What I have in my hand. (Handing)

MR. PRETTYMAN: Yes, okay.

xx (Defendants' Exhibit B-1 received in evidence.)

MR. PRETTYMAN: All right. It's an exact copy. Okay. We are all right. I am sorry. We are okay. That is an exact copy. Okay.

THE COURT: All right, let's put the tag on it.

Now, I am going to give this back to Mr. Prettyman and he is to handle it and keep it in confidence except that he's to show it to Mr. Schurtman.

MR. PRETTYMAN: May I do that now on the record?

THE COURT: And I will hand this B-1 to Mr.

Schurtman, and Mr. Schurtman, as I understand it, you are going to keep that royalty information simply between you and Mr. Kanzer and nobody else, except -- and Mr. Diamond, unless you let me know to the contrary or get the consent of Mr. Prettyman on the record, something like that.

All right, Mr. Schurtman?

MR. SCHURTMAN: That's correct, your Honor.

THE COURT: All right, thank you very much.

MR. PRETTYMAN: And I now hand to Mr. Schurtman the original of the same document. Needless to say, since these are very valuable I would hope that you keep the greatest care of them because I am not interested in letting them out of my presence.

THE COURT: Now, what else needs to be done?

MR. PRETTYMAN: Now we have a copy of the '69 agreement between EMI and Apple, and I don't think -- none of this was expurgated, so we have no expurgation problem here.

THE COURT: We just have a problem of readability.

MR. PRETTYMAN: Readability.

THE COURT: And if you can get a good Xerox copy made tonight, can you do that?

MR. PRETTYMAN: Yes. I am not supposed to take

it apart but --

THE COURT: You don't have to take it apart. Get a good Xerox and we will substitute that for Exhibit D tomorrow.

MR. PRETTYMAN: All right, sir.

THE COURT: Now the problem is we have Exhibit C-2 marked for identification which is the 1969 Apple-Capitol contract and we started in talking about problems in that regard before lunch. Now where do we stand on that?

MR. PRETTYMAN: Now, may I suggest that we make a C-3? The reason for that --

THE COURT: I haven't had any reference to a C-1 on the record so far, I don't believe.

What is C-1?

MR. PRETTYMAN: C-1 is the document which we originally marked during the deposition.

THE COURT: All right.

MR. PRETTYMAN: And we discovered that instead of the genuine John Lennon signature it was simply marked, signed, John Lennon at the end of it.

THE COURT: A conformed --

MR. PRETTYMAN: A conformed copy.

THE COURT: Right.

MR. PRETTYMAN: So therefore the question arose

by the plaintiffs on whether this was, you know, genuine. We then got a signed copy of this, which was marked C-2. Now the difficulty is that the schedule has been attached to C-1 so we can do one of two things: We can simply take this schedule off and put it on C-2 and use that or we can have an entirely new C-3, which will include the original --

MR. SCHURTMAN: I don't object to your taking the schedule off and adding it to the other one.

THE COURT: All right, we will do that.

MR. PRETTYMAN: So I am now taking the schedule of C-1, attaching it to the back of C-2, and C-2 will now be the exhibit that we will use for purposes of trial. All right?

THE COURT: All right.

Now we brought up something before lunch about an earlier ruling of mine regarding a schedule which was said to be part of an assignment between Apple -- between Adam VIII and Big 7.

MR. SCHURTMAN: Mr. Prettyman, withdrew his objection.

THE COURT: What's the exhibit number on that?

MR. GRUMBACH: 28.

MR. SCHURTMAN: Do you have the number?

MR. GRUMBACH: I believe that the offer was to

mark the original as 28 and the schedule as 28-A, but I am not sure.

THE COURT: Well, why don't we get the document?

MR. PRETTYMAN: Does your HOnor on the record want to hand C-2 to Mr. Schurtman now so he will have that with the schedule which he has not seen before?

THE COURT: All right, Mr. Schurtman, on the record I hand this to you. (Handing).

MR. SCHURTMAN: Thank you, your Honor.

MR. GRUMBACH: The point is that this is also subject to confidentiality.

THE COURT: I get it. I had forgotten that. Now look, Mr. Schurtman, part of that contained materials relating to royalties and that part is what, the schedule?

MR. PRETTYMAN: That's the schedule. And there may be other things in there too.

THE COURT: All right. So will you accept that schedule on the same ground rules as you accepted Exhibit B?

MR. SCHURTMAN: I do.

THE COURT: All right.

MR. GRUMBACH: Your Honor, I was correct, the assignment, the first page had been marked as Exhibit 28 and the second page, which was the schedule thereto, purportedly, had been designated 28-A.

THE COURT: So I had sustained an objection before to 28-A?

MR. SCHURTMAN: That's correct.

THE COURT: All right.

Then since there is no -- since that objection is withdrawn I will receibe 28-A and if you could find it so we can mark the tag, please.

MR. SCHURTMAN: Thank you. As soon as we go out. Shall we do it now?

THE COURT: Why don't you find it and hand it up when we get out in the courtroom. All right, thank you all very much.

MR. SCHURTMAN: Your Honor, as long as we are having this conference, can I raise a couple of questions about scheduling?

THE COURT: Sure.

MR. SCHURTMAN: In the light of what happened yesterday with Mr. Kives, Ray Kives, the Executive Vice President of K-Tel, I would like to have a definition from the defendants or the Court, as to what constitutes an expert because apparently my notion of what is an expert differs from the defendants' notion.

I honestly don't think that Mr. Kives should have been treated as an expert in that since yesterday.

That was not the type of expert that was intended when we gave the names of engineers who would testify as to the number of decibels in a tape. And I think what happened yesterday, I would like to prevent the recurrence of and to guide me for the future.

THE COURT: I think we would all like to. Can you get the rules from the bench, please? Let me ask you this, what did the defendants request? Did you request a list of expert witnesses from the plaintiffs?

MR. BERGEN: Yes.

MR. SCHURTMAN: And we requested them equally from them.

THE COURT: Has there been any exchange of fact witnesses, lists of fact witnesses?

MR. GRUMBACH: No.

THE COURT: So if somebody is in the category of an expert witness, he can be called and there won't be any reason to bar him.

I think it is a fair question and we better get squared away in advance as best we can.

What is your contention as to what an expert witness is, the defense side, whoever wants to speak?

MR. PRETTYMAN: In the first place, your Honor, he was offered as an expert witness and, therefore, we sim- took them at their word that he was, in fact, an expert witness.

My own feeling about it would be somebody who does not have personal knowledge of a particular matter at issue but who is testifying more or less hypothetically or theoretically about a --

THE COURT: What about somebody talking about industry practice, is he a fact witness or expert witness?

He may not voice any opinions at all; he testifies as to what he understands the facts to be about industry practice.

Is that an expert witness?

MR. PRETTYMAN: I would think not myself. I am just speaking solely for myself.

THE COURT: Wait a minute.

I don't recall every word of that man's testimony and maybe he was asked to express some opinions and I guess he was on estimates of damages, wasn't he?

MR. GRUMBACH: Yes.

MR. SCHURTMAN: Does that make him an expert, for Heaven's sake?

THE COURT: What else could?

MR. SCHURTMAN: Oh, no.

THE COURT: An opinion about damages?

MR. SCHURTMAN: No. Somebody who is in the business gives his opinion as a projection of sales, well, that is why I want a definition. I will be guided by whatever is decided.

MR. PRETTYMAN: One difference, for example, I have in mind, your Honor, that might relate to this case. Let us suppose that you had an engineer come in and he is going to testify about some technical matters in connection with making of records. If that man is going to testify about what actually happened here, even though it is technical testimony, he is testifying about what actually happened and the significance of it, I certainly would not

think that he was an expert or being offered as an expert.

On the other hand, if you get somebody who has had no connection with the case who is an engineer and comes in and testifies about what happens if you have a 7-1/2 as opposed to something else and so forth --

THE COURT: Let me just say this:

There is no reason here to have any surprise about witnesses. In a lot of trials before you go to trial you exchange witness lists of both fact and expert witnesses. I am not going to try to expand the pre-trial, but I will say this:

In order to prevent argument and confusion in the future, I think that both sides should exchange as soon as they can -- not this minute, but as soon as they can -- the names of the witnesses that they intend to call who will testify about matters of opinion and matters of industry practice.

That would include people who would testify about the practice about writing contracts or making oral contracts, the practice about the use of seven and a half IPS tapes or other speed tapes, opinions about how many records would be sold, opinions about other aspects of damages, opinions about how to produce records, industry practice about how to produce records, all of that kind of

thing.

I think you probably pretty well know who the fact witnesses will be, so that is a useless exercise.

But I don't see why you shouldn't exchange your list of fact witnesses here.

MR. PRETTYMAN: I assume, your Honor, to exchange it as soon as you know who they are, because there are a couple of instances where a decision might be made later.

THE COURT: Yes, of course. That is naturally, particularly from the defense standpoint, even from the plaintiff.

But I am going to say unless there is a strong objection, I think at this point the best way to handle it is for parties to very quickly exchange complete lists of potential witnesses of any and all kinds.

I just hope I won't be met at a later point with some undisclosed witness who might have some information and there will be an attempt to bar him.

I am interested in getting the information. I am much more interested in doing that than barring witnesses.

So take a liberal view of your potential witnesses and exchange the list. You know, this isn't a criminal case. Nobody is out gunning them down or anything, so let us just get it out in the open.

MR. SCHURTMAN: Would you also make a formal ruling on the subject of interviewing witnesses to prevent any repetition of what happened yesterday?

THE COURT: Okay.

I want to say that it is up to the witness entirely.

If a witness is approached by an attorney to be interviewed, that witness can refuse or consent to that interview on conditions that that witness states. And if a witness says, "I prefer to have a lawyer present," I don't know what you do. You know, that isn't a condition or a demand, that is a discussion, and I am not going to try to get into that discussion. That is up to the lawyer.

I assume nobody is going to browbeat these people, you are going to handle it in a civilized, gentlemanly way.

If he says, "I prefer to have Mr. Schurtman there," and if Mr. Prettyman says, "Well, Mr. So and So, I understand your preference, but from our standpoint it is more desirable to be able to talk to you privately," and if the witness ends up agreeing to that, you know, there is nothing uncivilized or illegal about that process. It is just up to the witness and the attorneys to get a mutually consented to arrangement. I just won't dictate that.

Okay.

MR. BERGEN: Your Honor, we have one more point.

Mr. Schurtman has raised in a couple of instances an objection about parol evidence with respect to these agreements and we would like, if we could, to clarify that.

It is our position that you just can't take these agreements, these three agreements, and sit there and read them where the important thing is what the parties intended when they were negotiating it, what Mr. Lennon and Mr. Seider thought when they went into that meeting, how EMI and Capitol and Mr. Lennon operated under the agreement, and it is our position that the parol evidence rule really only applies where one of the parties to an agreement is trying to say, "Well, we agree, you know, to such and such orally."

THE COURT: It was just a manner of speaking.

I don't know how to rule in the abstract completely, but it seems to me if you have a contract that has any ambiguity, certainly the people who negotiated can, I assume, testify as to what their intention was. That's not varying the contract.

I don't know in advance. I don't know completely, because I haven't read these agreements. I don't know to what extent it is ambiguous.

The one thing I think I would find very hard to admit is some lawyer being asked to sit here on the stand and tell me what he thinks it means today. That's what you were really asking, Mr. Bergen, and the list of possible types of testimony you suggested in the last few minutes is not that and it could very well be perfectly valid.

MR. BERGEN: I understand.

MR. PRETTYMAN: The reason we are bringing this up now, your Honor, is that there will be several witnesses who will be testifying what the actual practice was under the contracts, what their understanding was and how the parties operated.

What we are really trying to bring to your attention now in regard to this is that this is not the normal situation where you have two parties to a lawsuit who have interested an agreement differently.

We have here the two parties to the agreement who have interested and practiced under it exactly the same way.

We have a third party who says, "Well, wait a minute, I think those contracts really mean something else."

So what we are going to be showing you is three parties, actually, Apple and EMI and Capitol interpreted

these contracts, practiced under them in exactly the same way. We think we are entitled to show that.

THE COURT: What do you say?

MR. SCHURTMAN: Well, I don't entirely agree.

It seems to me, well, there is the classical objection, the contract speaks for itself, which I think is very applicable here.

These contracts, at least on their face, seem to be clear and unambiguous. I have read them.

Language was chosen very precisely in those contracts. When they meant license they said license, when they meant assignment they used the word assignment, when they spoke of mail order rights, they put mail order rights, when they spoke of club rights, they had different language.

And what you are now getting is a bunch of lawyers who will tell you that they negotiated these agreements and start giving you all sorts of differing interpretations.

THE COURT: You see, this is kind of abstract to me. I haven't read the agreements. I don't know to what extent there are terms in there that really refer to special industry practice, I don't know what jargon is in there, I don't know what problems of ambiguity or interpre-

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tation exists, and just as an abstract proposition, certainly you can have contracts which just taken out of their setting and just read by a stranger could be interpreted in an unrealistic manner.

MR. SCHURTMAN: May I suggest this, your Honor--

THE COURT: So I don't know what to do in the abstract given --

MR. SCHURTMAN: I would like to suggest a practical solution.

THE COURT: Okay.

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MR. SCHURTMAN: Since this is a non-jury trial, I would suggest that the evidence ba allowed to go in and for the time being I would like to assert a continuing objection to it, but hear the evidence, and then once you have heard it you can decide whether it is admissible or not.

THE COURT: I think this:

I have got to get to the point pretty quick where I see what problems there are in the language in the contract, and if you can somehow, when these problems come up, either focus in your questions on specific language or let me know in advance -- I haven't read them. I mean, they have just come in.

Let us not try to lay down a legislation at the present moment, let us just go out there and if you have a legitimate argument that the contract needs interpretation and needs it by reference to the intention of the parties or the practice of the parties or industry practice just as an abstrct proposition, there is nothing wrong with that.

I don't know yet, you know.

MR. PRETTYMAN: Okay.

The only thing I want to add was as a reminder, your Honor, we have here not only a situation

where the third party is trying to tell the two other parties what it meant, but you have a third party who admits he has not even read them, so it is even one step removed.

MR. SCHURTMAN: Let me point out according to your argument, Mr. Prettyman, if we had read them we still wouldn't know what they mean.

MR. PRETTYMAN: That is exactly right, but it so happens you didn't.

THE COURT: All right, we will get along.

(In open court.)

H A R O L D S E I D E R, resumed.

DIRECT EXAMINATION (Continued)

BY MR. BERGEN:

Q I am sure where we were, Mr. Seider, but I think now we have gotten the three agreements into evidence, the 1967 agreement and the two 1969 agreements.

I believe I asked you, but let me just get it clear on the record, were you involved in the drafting of Exhibit C-2, the Apple-Capitol September 1, 1969 agreement?

A Yes, I was.

Q Were you involved in any of the negotiations leading up to that agreement?

A Yes, I was.

Q Can you describe those negotiations and the events leading up to that agreement?

MR. SCHURTMAN: I will object at this point, your Honor.

THE COURT: I will overrule the objection.

I think it is a little abstract to me right now,but in accordance with the discussion we had a few minutes ago the best thing I think I can do now is to overrule the objection and start hearing the evidence. Okay.

A Some time I believe the first week in August of 1969, Mr. Alan Klein and myself and I believe Joe Silver and I think our respective wives flew to California for meetings with various people at Capitol for the purpose of negotiating an increased royalty, primarily an increased royalty for the Beatles premised on the delivery of additional recording product.

By "product" I mean additional recordings.

Under the 1967 agreement, I believe that the Beatles were required to provide a minimum of recordings within a five-year period and then there was -- the total contract -- the total 1967 agreement was, I think, a 9-year agreement, and that after they had provided all of the minimum recording obligation, for the next four years

they weren't required to provide any additional product, but they couldn't record for anyone else.

And the premise upon which we had begun the negotiations with the Capitol and the EMI people, and primarily the Capitol people, was to contractually obligate the Beatles to deliver additional product for which the Beatles would get a higher royalty.

And so some time in August of 1969, we went out to California to negotiate what that additional royalty would be, what that additional product obligation would be.

We met with -- I believe the meetings took place at the Capitol offices, and the people in behalf of Capitol who were present during the negotiations were Mr. Stanley Gortikov, who was the president of, I think, Capitol Industries, Inc.. That company, I believe, was the parent company of Capitol Records, Inc., a subsidiary.

Also as part of this negotiation on the part of Capitol, I remember Mr. Elliot Chaum, who I believe was a vice president or director of business affairs of --

THE COURT: Mr. Seider, I am flying blind here.

I am not interested as such in the negotiations leadingto this 1969 agreement. This is four and five years

before the events I'm concerned with.

I am told that I am going to have some problems in interpreting one or two provisions of this contract, but I tell you, I just cannot get in -- somehow we have to get this thing pointed up, because I don't care -- I mean, I care, but I do not need to know all the details of who Elliot Chaum is. I don't think I do.

I am very anxious --

MR. BERGEN: I think Mr. Seider is trying to lead up to a document that I am going to introduce and maybe he can get right to that document.

THE COURT: Let us get very quickly to the point on this, because this is really preliminary.

Q As a result of those negotiations, Mr. Seider, was some kind of a memo of understanding arrived at?

A Yes.

Q I show you a document that has been marked as Defendant Exhibit 0000, and ask you if that is the document you are referring to (handing).

A Yes.

MR. BERGEN: Your Honor, I offer this document into evidence.

MR. SCHURTMAN: I object on the grounds that it is my understanding that whatever may have been

covered here was ultimately superseded or merged into another contract.

THE COURT: I am afraid what I have got to do is to have you show me the part of C-2 or whatever it is that , you know, is supposed to be eliminated by this.

MR. BERGEN: I can, your Honor.

I can ask the witness to do it, your Honor.

Q Mr. Seider, referring --

THE COURT: Where is C-2? Can I have a copy of C-2?

MR. BERGEN: I am not sure I have one with the schedule on it, your Honor.

THE COURT: I am not looking at the schedule.

(Handing to the Court.)

THE COURT: All right, Mr. Bergen,you tell me, what is the problem area in C-2?

MR. BERGEN: The problem area, at least as far as the plaintiffs are concerned, is page 24, which begins "Article III, distribution.

MR. SCHURTMAN: We don't have a problem, it is your problem. He said as far as the plaintiff is concerned.

THE COURT: All right.

Mr. Bergen, go ahead.

Q Mr. Seider, can you describe --

THE COURT: In other words, what is it that needs interpretation here?

MR. BERGEN: I think if I ask Mr. Seider a couple of questions here, I think we can get right into that point, which is really one of the principal points of why we are here.

Q Mr. Seider, can you describe for us how the agreement between EMI and Apple and the agreement between Apple and Capitol, the 1969 agreements, were supposed to operate and how the parties operated under it and what they understood to be the operation?

THE COURT: Look, I asked you a very direct question. I don't want to receive a lot of evidence about performance and background unless I know what the problem of interpretation is.

I am beginning to read this for the first time, Article III, Distribution, and it says, paragraph 1, "Apple hereby grants to Capitol and distributor."

Who is distributor? I guess that is another Capitol -- Capitol Records Distributing Corporation.

MR. BERGEN: That is Capitol Records Distributing Corp.

THE COURT: "And they each do hereby accept

all of the rights which Apple derives under the licensing contract," and I take it that that is the only 1969 contract.

Going on with the reading, "Except, 1, the right to manufac ure records in the United States, 2, the distribution by mail direct to customers and, 3, the right to manufacture and distribute one motion picture," and so forth.

Is that the language which requires interpretation?

MR. BERGEN: That is part of the language.

THE COURT: What is the other language?

MR. BERGEN: The other language is a few pages on, beginning in Article IV on page 31, your Honor, Article IV, which is entitled "Licensed Territories and Record Clubs."

THE COURT: Okay.

MR. BERGEN: And the language there, part of the language, is in paragraph 7.

THE COURT: All right.

Okay. What is the language there?

MR. BERGEN: Basically, that entire paragraph, your Honor.

THE COURT: "The parties hereto intend to

negotiate with Longine Symphonette Society, Inc. for the release of records derived from Beatles masters through the Capitol Record Club in the United States, Canada and/or Mexico on a non-exclusive basis. The parties also wish to enter into contracts with other record clubs in the United States, Canada and/or Mexico for distribution of said records, provided that such clubs shall pay a royalty of at least 9 percent of the price of records to members, of which Capitol would be entitled to 3-1/4 percent and Apple would be entitled to 5-3/4 percent. No such records maybe released through any record club earlier than one year after first release in the United States."

Give me a second to think and look at these things.

(Pause.)

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THE COURT: Now look, Mr. Bergen and Mr. Schurtman, just reading this very quickly, I guess -- Mr. Schurtman, you rely I take it on this article III paragraph 1 which says Apple hereby grants to Capitol and distributor, and so forth, all of the rights which Apple derives under the licensing contract except the distribution by mail direct to customers.

MR. BERGEN: Consumers.

THE COURT: Consumers. Is that what you are relying on?

MR. SCHURTMAN: That is correct.

Now I mean, what is the significance of this thing about the clubs?

MR. BERGEN: Your Honor, the defendants' contention is that that language direct distribution by mail direct to consumers, was intended that the parties understood it to be and they operated under it, that that refers to club rights, and therefore the paragraph 7 says, summarizing it, that first of all the parties are going to negotiate with respect to club rights somewhere down the road. Because Mr. Klein didn't want to give the club rights for Beatles records to the Longine Symphonette. He wanted to see if he could make a better deal for somebody else. So since Capitol and EMI were not willing to give up the club

rights the parties agreed, okay, Apple cannot put out club rights, and neither can Capitol put out club rights, we will negotiate that at some point down the road.

And the next part of that is in any event no such records, the last sentence of paragraph 7 says, no such records, meaning club rights which the parties to the agreement to include direct mail to consumers, they used the terms interchangeably, no such records may be released through any record club earlier than one year after first release in the United States. Meaning that even if a record club deal is entered into, the record that may go out under a record club still has to go through the normal distribution pattern before ti can even be put into the record club classes.

THE COURT: All right.

Now look, just going back to this Article III paragraph 1 let me just think out loud a second.

You have got -- Apple has all these rights from EMI under the other '69 agreement, right?

MR. BERGEN: That is correct.

THE COURT: Whatever they are. And then Apple is saying that they grant to Capitol, the Capitol companies, everything except the distribution by mail direct to consumers, and that means that Apple still has the right to

distribute by mail direct to consumers. Now your argument is that what they were retaining was intended to be solely the right to distribute to clubs, right?

MR. BERGEN: No; what I am saying is they were retaining the right to negotiate with Capitol at some later time the distribution through record clubs. In other words, Apple was not being given that right, you know, completely free. It was being given a chance to negotiate with the record company --

THE COURT: Under Article III paragraph 1 Apple retains something, right? It retained the distribution by mail direct to consumers.

MR. BERGEN: No, it retained--

THE COURT: Because that's an exception.

MR. BERGEN: No, it retained with a caveat and the first caveat being that EMI pursuant to the EMI agreement has all of the rights and it has the right, the exclusive rights to distribute Beatle records and the right of approval.

THE COURT: You are just going too fast for me. I am just taking this language and I want to, you know, if you would just follow step-by-step. Apple is saying in this paragraph 1, we grant to Capitol all of our rights under the other agreement except we don't

grant you, Capitol, the distribution by mail direct to consumers. In other words, that is not granted to Capitol. Right?

MR. BERGEN: That --

THE COURT: All right. Whatever that means I will postpone. But that either stays with Apple or it stays back with EMI but don't go to Capitol at that moment. All right. Now, I am trying to get clear what your position is as to the relationship with the club sales.

Now are you telling me that I should read the phrase, the distribution by mail direct to consumers to refer to distribution by mail direct to consumers in club distributions or something?

MR. BERGEN: The parties intended that those two terms mean the same thing and we will show --

THE COURT: All right. Now what you are saying is that Apple gave Capitol the exclusive rights to what we might call other mail order distribution aside from club rights. Right?

MR. BERGEN: That is correct.

MR. PRETTYMAN: It was the same thing at that time.

MR.BERGEN: They were the same thing.

MR. PRETTYMAN: There weren't any others.

It was the same thing, that is where the confusion comes in.

MR. BERGEN: The term direct mail to consumers --

MR. PRETTYMAN: If I can just take one try at it, your Honor.

THE COURT: All right.

MR. PRETTYMAN: Absent that provision that you have just read, Apple would have passed on to Capitol rights, including club rights.

THE COURT: Because they had them in the past.

MR. PRETTYMAN: They had gotten them contemporaneously from EMI. But Mr. Klein didn't want to give exclusive club rights to Capitol. What he wanted to do was to be free to go outside to other parties and try to negotiate a better deal. And so what he was saying was, in effect, as to whether you call it mail order or club, as to those rights we do not give you exclusive rights, but rather we retain some rights to ourselves. And then if you turn to that second page that Mr. Bergen referred you to it defines precisely what he retained to himself.

THE COURT: What did he retain to himself?

MR. PRETTYMAN: What he retained to himself was in effect the right to goout and get a better deal on club

rights with somebody else, however --

THE COURT: What do you mean better? Was Capitol tied up with Longines Symphonette?

MR. BERGEN: Yes, your Honor.

MR. PRETTYMAN: He didn't want these right to flow directly to Longines and he also thought, for example, he could go to Columbia and get a great deal that Capitol couldn't get or might not want to get but he wanted to be free to do that.

However, it was made nevertheless subject as all the parties understood this, and this is why nothing ever happened, it had to be subject to EMI's approval and it had to be subject to Capitol's approval. He simply wanted the right to get a better deal if he could subject however to everybody's approval.

THE COURT: All right.

Now, could you come over to paragraph 7? Now, what your contention is that -- it says the parties hereto, now that means all parties, they were going to negotiate with Longine, right?

MR. PRETTYMAN: Right.

THE COURT: And a --

MR. PRETTYMAN: On a non-exclusive basis. See that --

THE COURT: Wait. For the release of records derived from Beatles' masters through the Capitol Record Club. Was there a relationship -- I am just asking for your contention, I know your are not testifying.

MR. PRETTYMAN: Sure.

THE COURT: And I will get Mr. Schurtman's contention in a minute but you kind of have the laboring oar here and I will ask you what you are talking about. I want to know, was there a relationship according to your contention between Capitol Record Club and the Longines Symphonette Society?

MR. PRETTYMAN: Longines owned it. Capitol had sold it to them.

THE COURT: Well, was there then a relationship --

MR. PRETTYMAN: Although it was called Capitol Record Club it was operated by Longines.

THE COURT: Well, was there a continuing contractual relationship between Capitol and Longine?

MR. PRETTYMAN: Yes.

THE COURT: What was that?

MR. PRETTYMAN: Well, I am not sure that I can explain to you in detail --

THE COURT: Just roughly.

MR. PRETTYMAN -- except that normally after a

period of time records that Capitol was no longer interested in, you know, in the terms of being current best sellers and so forth, after a period of time certain records would pass to Longines to be sold through the Capitol Record Club.

THE COURT: Was Capitol under some kind of an exclusive thing with Longines where if they were going to sell through clubs they could only do it through Longine?

MR. PRETTYMAN: I would have to refresh myself. Maybe you can, Harold.

THE WITNESS: I don't know myself. I know there was a relationship between the two.

MR. PRETTYMAN: I think there was a relationship --

THE COURT: Well, what was the purpose of this 7 then? They had to get a release of something, didn't they?

MR. PRETTYMAN: You see, without this what Mr. Klein and Apple were concerned about was that these Beatle albums would in due course automatically flow from Capitol to Longines to be put out to the Capitol Record Club and he didn't want that because he thought everybody could make more money if these Beatle albums could come out through a number of clubs. So the first thing he had

to do was to provide that they were going to negotiate with Longine on a non-exclusive basis. That is the first proposition. So they could give a deal to Longines but these albums also had to be available to others. And he goes on here. The parties also wish to enter into contracts with other record clubs in the United States, Canada and Mexico for distribution of said records with certain provisions. And, at the end, no such records may be released through any record club earlier than one year after release in the United States. So what Mr. Klein has done in essence is to say, I don't want these Beatle albums going just through the normal course at the normal rate through Capitol to the Capitol Record Club owned by Longines. I want to put them out to a number of clubs, I want to get better deals on them, and in order to do that I go over here in the first thing and say, instead of giving you complete and exclusive rights to what we say is mail order/ club rights, we are making an exception in that case and are not giving you the exclusive rights there, we are holding back a certain right even thought it means that after we negotiate all the parties are going to have to agree. Mr. Seider says --

THE COURT: Well, look --

MR. SCHURTMAN: May I be heard, your Honor?

THE COURT: Yes.

MR. SCHURTMAN: Well, your Honor, we have several contentions.

Contention No. 1 --

THE COURT: Speak up.

MR. SCHURTMAN: Contention No. 1, the agreement simply doesn't say so. When they wanted to use the words distribution by mail direct to consumers they used that language in Article III Section 1. And incidentally, they used it again if you will look at Article IV Section 1 the same language appears, sell records by mail order direct to consumers. When they wanted to refer to club rights, to record clubs, they used other language which appears in Article IV Section 7.

THE COURT: Wait a minute now, Mr. Schurtman. We have gone over this Article III --

MR. SCHURTMAN: I am relying on Article III Section 1.

THE COURT: All right, Section 1.

MR. SCHURTMAN: That uses the words distribution by mail direct to consumers. Now to emphasize the point --

THE COURT: Well now, would the use of clubs not being mailed direct to consumers something else? What do you do, distribute them to the clubs and the clubs

distribute them?

MR.SCHURTMAN: Clubs is a special form of mail to consumers but it is not all embracing. And we will present evidence, your Honor -- well, we will present two types of evidence. We will present Mr. Alan Klein's testimony --

THE COURT: Mr. who?

MR. SCHURTMAN: Mr. Alan Klein, the man who negotiated this who disagrees with Mr. Prettyman's interpretation. He says that mail order and --

MR. PRETTYMAN: That is not so.

MR. SCHURTMAN: -- club rights are two separate things. More than that, we will present forms of agreement showing that at the time this agreement was drafted all the drafters in the industry made an express distinction between record club rights on the one hand and general mail order rights on the other hand.

So our rebuttal to Mr. Prettyman's argument is, No. 1, the agreement doesn't support him by its terms. No. 2, the practice in the industry doesn't support him. And No. 3, Alan Klein, the man who negotiated this agreement doesn't support him.

MR. PRETTYMAN: Of course we will hear from Mr. Klein in due course. Your Honor, may I just add one thing to this so you will have the full sense of this?

We will introduce agreements contemporary with this one, those just before and just after, that have this clause in it, the words club distribution plan mean distribution by mail order direct to consumers. That's the way the parties considered it. They considered it interchangeable at that time because this was a time when we did not have this whole advent of television advertising the way we do today and it did not have the significance in those days and the lawyers used the terms interchangeably. And you will see this from the Gortikov memo, for example, which we were showing the witness at the time that this came up.

THE COURT: What was the length of time this was to last for what, consider it was to last how many years?

THE WITNESS: May I answer you?

THE COURT: All right. Six or what?

THE WITNESS: No. It was to last for the duration of the EMI Beatle contract which is the duration expires on the 26th of January 1976. And then it was to continue thereafter, but although it is kind of vague as to for how long it continues thereafter.

THE COURT: Well, I will tell you, this -- can we get any kind of simplification of this problem if we look back at Exhibit D?

THE WITNESS: Your Honor, may I --

THE COURT: Because I think that -- can we look at Exhibit D and see what the problem is there? Because --

THE WITNESS: Your Honor, perhaps I might be of assistance, if can, to explain why that particular provision --

THE COURT: No, no. Can I see Exhibit D?

MR. SCHURTMAN: May I suggest one simplification?

THE COURT: What?

MR. SCHURTMAN: To put it in its most simplified terms I think what happened is they kept all of the mail orer rights but then they decide -- when I say they, I mean Apple -- decide to get one segment of those mail order rights, mail order rights, back to Capitol. I think that is what happened in a simplified form.

MR. BERGEN: That isn't what happened at all.

THE COURT: All right, you disagree. Where is Exhibit D?

MR. BERGEN: Mr. Schurtman had it inside.

MR. PRETTYMAN: I think I have them here, your Honor.

Here it is but it is not a very good copy.

(Handing.)

THE COURT: All right.

MR. PRETTYMAN: If you can't read that I will give you the original, your Honor.

THE COURT: I can read this.

Now what is the language in -- give me the original, you are more familiar with it, it is a little hard for me. What is the language? Exhibit D, the 1969 EMI contract.

MR. GRUMBACH: Is this a better copy (handing)?

THE COURT: It probably is. All right now, what is the crucial language here?

MR. BERGEN: Paragraph 8. We start off with paragraph 2, your Honor.

MR. PRETTYMAN: Paragraph 8.

MR. BERGEN: Then it goes to paragraph 8.

MR. PRETTYMAN: Yes, 2 and 8.

THE COURT: All right.

What do you say about paragraph 8 of Exhibit D, Mr. Schurtman? It says neither party may assign this agreement or any part thereof or rights hereunder without the written consent of the other, and so forth.

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MR. SCHURTMAN: Your Honor, there is a very well established distinction in the law between an assignment and a license, and the lawyers who drafted these agreements knew the distinction because when they wanted to refer to a license they used that word.

Now the distinction briefly stated, and we will be glad to brief the point for your Honor, is that an assignment is usually the whole ball of wax, or part of it, a license deals with one specific, or several specific performances.

In other words, if Apple and Lennon had said to Mr. Levy, from now on your company is going to have all of our mail order rights, that might be construed as an assignment requiring the consent of EMI. But to license a single album, that's a license that's not an assignment.

THE COURT: Well, I will tell you, I --

MR. SCHURTMAN: And again we will put in evidence industry practice to show you what the difference between a license and an assignment is. It is a well-established difference in the copyright field, in the patent field. The copyright field is certainly related to this. And generally in the musical industry. They know what the difference is.

MR. PRETTYMAN: Your Honor, if that --

THE COURT: Please, just a moment.

Now, look, Mr. Schurtman, as far as I have been told so far what all of these contracts are dealing with is the right to sell records, right? I mean that's the basic thing, that's the game, isn't it?

MR. SCHURTMAN: Well, the ultimate end is to sell records, but I think you are over-simplifying it if you simply speak of a right.

THE COURT: I don't want to over-simplify it but it seems to me that I would assume that that's what it's about, with some winkles, maybe, in addition.

Now, if you -- what I don't understand is this: The Beatles enter into a contract in 1969 giving EMI the right to --

MR. SCHURTMAN: '67.

THE COURT: '67, the right to market their records. I have got to assume, unless -- I would assume that it would be a violation of that agreement for the Beatles to go over and make one record for MGM.

MR. SCHURTMAN: At that point, yes.

THE COURT: EMI would be very upset. And the Beatles could come back and say, Oh, well, it's only one record, but one record is one record.

Now, Exhibit D comes along and EMI is trans-

ferring all of its rights for North America to Apple, and I would be very surprised if it just had a kind of an out, so to speak, which permitted Apple to come back to EMI and say, "Oh, well, you had this thing about getting consent and all, but it was just one record, just one record."

MR. SCHURTMAN: Your Honor, let me explain something then.

The reason Alan Klein made this deal in 1969, one of the reasons, was precisely to give the Beatles more freedom and more rights than they had in the past. Now what he finally suggested in doing was getting EMI to give up North American rights to the Beatles on condition that most of these rights then be passed on to EMI's subsidiary, Capitol.

But it left them with certain other rights. Now, if all you are saying is that EMI gave these rights to the Beatles, said, yes, we are giving them to you on condition that you give most of them to our subsidiary Capitol and with respect to the remaining rights we won't let you do anything unless you get our consent, then what were the Beatles getting? Nothing. The whole purpose of this agreement was to give them somewhat more freedom than they have under the original EMI agreement and Mr. Klein--

THE COURT: I don't assume that EMI would

relinquish one ounce of control.

MR. SCHURTMAN: EMI was forced to relinquish it precisely because Mr. Seider testified that the Beatles had EMI over a barrel and EMI had the Beatles over a barrel. The Beatles were in the position where they did not have to record another record for EMI. They had met their minimum commitment.

At any time EMI could prevent the Beatles from recording for anyone else. They had a Mexican stand off at that point and Alan Klein who was coming in as the new manager for the Beatles, or at least for three of the Beatles, at that point and for the Apple companies, decided to seize upon that point, that Mexican stand off and force EMI to make some consessions.

Now, he forced EMI to give the rights to the Beatles in North America. EMI managed to salvage something from that by saying, Yes, but you have got to give certain of these rights to our American subsidiary, Capitol. But Klein succeeded in hanging on to some of the rights directly for the Beatles. And now to come back in and say yes but even as to those rights, you couldn't do anything with them unless EMI consented, then you are right back where you started.

THE COURT: But look, now look this language at

paragraph 8, I start with kind of the plain meaning. I think it is all fine for everybody to get behind the meaning and introduce memos of understanding and underlying intent, but I do start with the language.

Now the language I think is prima facie against the defendants on this Exhibit C-2, but honest, Mr. Schurtman, I think it is the other way around on this Exhibit D.

Neither party may assign this agreement or any part thereof or rights hereunder.

MR. SCHURTMAN: Well, your Honor, if you--

THE COURT: Now, are you telling me that Apple could go and give Mr. Levy something called a license and it wouldn't violate this?

MR. SCHURTMAN: Exactly what I am saying, your Honor, because it is born out by case law and by industry practice.

Now, I don't know if your Honor has had specific experience with assignments and licenses in the copyright field or the patent field but --

THE COURT: What's the difference?

MR. SCHURTMAN: It is a well-established distinction. A license is one thing and an assignment is something else.

THE COURT: What would an --

MR. SCHURTMAN: And if these lawyers --

THE COURT: It says an assignment of rights hereunder. What would it -- let's not use either word -- the granting of -- let us assume that Apple retains, let us assume under your interpretation of C-2 that Apple retains the right of distributionby mail direct to consumers. That would be a right retained by Apple, correct?

MR. SCHURTMAN: Yes.

THE COURT: A right. So we don't have any trouble with the word rights. The mail order distribution would be a right hereunder according to the language of paragraph 8, would it not?

MR. SCHURTMAN: It is a right, no question about it.

THE COURT: All right, it's a right hereunder, isn't it?

MR. SCHURTMAN: Yes. Of course.

THE COURT: Now you are telling me that --

MR. SCHURTMAN: I am telling you there is a distinction --

THE COURT: -- you can write -- all right, what's the distinction?

MR. SCHURTMAN: The distinction is the same one I had mentioned previously, that if Apple had told Levy,

or his companies, we are giving you all of the mail order rights under this agreement, that could be construed as an assignment requiring the consent of EMI. But if all they told Mr. Levy's company was, we are giving you a license, or the rights to one particular album, that's a license, that's not an assignment.

MR. PRETTYMAN: Your Honor, can I say one thing because --

MR. SCHURTMAN: And furthermore -- may I just finish?

MR. PRETTYMAN: Sure.

MR. SCHURTMAN: Mr. Kanzer reminded me this was not an outright assignment for all time, it was a license for a limited period of time.

In fact, we take the position, for less than a year, and after that everything would revert. That isn't an assignment. When you assign something you don't get a reversion back after a few months.

THE COURT: May or may not, I don't know.

MR. SCHURTMAN: Well, it's a point of law, your Honor, that at some point I am afraid the Court will have to grapple with. But we can't just simply ignore it. It's a well-established distinction of the law.

MR. PRETTYMAN: Can I get a word in?

THE COURT: All right.

MR. PRETTYMAN: I think I can demonstrate the absurdity of that point from a business standpoint or practical standpoint, if I just point this out to your Honor.

Under that theory, since they take the position that mail order sells better than normal retail channel and they take the position, you heard from their own witness yesterday, that these so-called licenses can be in perpetuity,this would mean that every Beatle album that arrived at Apple by the simple device of Apple saying, this is mail order, they could give it out to Morris Levy and X-company and X company and not even have a provision for payment to EMI because we haven't heard any, in regard to this, a payment to EMI. They simply take this album and they so-call license it out, Capitol gets nothing, EMI gets nothing. It's absurd on its face. Obviously.

THE COURT: You could do it one album by one. You could call it a license and you would just say okay, we do it for this album we do it for the next one, we do it for all of them. What's left?

MR. SCHURTMAN: Let me read to you the distinction between an assignment and a license made by the United States Supreme Court in the case of Waterman McKenzie,

138 U.S. 252, it was recently cited as authority on March 16, 1973 in this Court in the case of American Optical Company against Curtis by Judge Duffy, and I quote, if I may:

"In the Waterman and McKenzie" and the citation "assignments and licenses are differentiated in the following way:" And there deal with a patent, "The patent" or his assigns may assign, grant, and convey either, one, the whole patent comprising the exclusive right to make use and vend the invention throughout the United States, or, 2, an undivided part or share of that exclusive right or, 3, the exclusive right under the patent within and throughout a specific part of the United States, a transfer of either of these three kinds of interests is an assignment properly speaking and vests in the assignee a title in so much of the patent itself or the right to sue infringers."

And the second case -- "In the first and third cases in the name after the assignee, a lien."

Here comes the critical language, "Any assignment or transfer short of one of these is a mere license giving the licensee no title in the patent and no right to sue at law."

Now, what we are saying is that when Apple and Lennon licensed to Mr. Levy or transferred to Mr. Levy,

I wouldn't beg the question by using the word license --

THE COURT: What did they do?

MR. SCHURTMAN: They transferred to Mr. Levy a short-term right to market an album, one specific album on television for a limited period of time and at the end of it everything would go back to Apple. That, your Honor, in the law is not an assignment, it is a mere license. And to back that up was the fact that if you believe Mr. Levy's testimony of what happened on October 8, he had to make a specific point of the fact that while he was on television with his album he wanted to have the exclusive right to it because as soon as it was off television he knew it would revert back to Apple.

Now, you can't simply dismiss the significance of this distinction your Honor, by saying it's all rights and what difference does it make. Lawyers and Courts have been making these distinctions for at least a hundred years and perhaps longer and I suggest to you that the draftsmen of these three agreements used license in one context, an assignment in another context and they knew what they were doing.

MR. PRETTYMAN: Your Honor, may I show you an exhibit in the case where Big Seven assigned its rights to Adam VIII? To this album? So even assuming that their

language is correct that an assignment would be illegal even under their own interpretation.

MR. SCHURTMAN: I don't disagree with that because what Big Seven did was give away its rights forever to Adam VIII. It retained no rights. That's the difference.

MR. GRUMBACH: Your Honor, that is inconsistent--

THE COURT: All right, this at least illustrates the point.

Well, the argument has, you know, it has certainly educated me. I guess we have to go ahead with this. I just have a sinking feeling that I will hear all about this underlying intent and the memo of understanding and I don't know where I will be after I get through with it.

But, you can try. All right.

MR. BERGEN: I forgot where we were.

THE COURT: Exhibit triple O.

You offered Exhibit triple O and I will receive it. I think that I have got to try to demonstrate your point. All right.

MR. BERGEN: Judge, that's quadruple O.

THE COURT: I am sorry, my mistake.

(Defendant's Exhibit OOOO received in evidence.)

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BY MR. BERGEN:

Q Mr. Seider, to your knowledge, did Alan Klein ever give any dealers' record to a recording club or sell it by, you know, direct mail to consumers?

A During the time that I was associated with Abkco, I have no knowledge that any club rights were granted.

Q How about selling any Beatles record through television or anything like that?

A Whether Mr. Klein granted?

Q Yes.

A I have no -- at least during the time I was associated with Abkco I have no knowledge.

Q Now, during the negotiations of the 1969 Apple-Capitol agreement, was there discussion about record clubs?

A Yes.

Q Now, can you tell us what those discussions were?

A I believe that at the time of these discussions in August of 1969, the Capitol Record Club was operated by Longines and Alan felt that -- Alan being Mr. Klein -- felt that he could make a better deal. He didn't think very much of the Capitol Record Club or Longines, and I think he had had prior dealings with Columbia Record Club and he

felt that he could get a higher royalty from the Columbia Record Club or any of the other record companies. And that particular aspect was embodied in that memo that was made in August of 1969.

Q Referring to Exhibit quadruple O?

A That's correct. Also under the '67 agreement the rights of EMI with regard to record clubs were restricted, namely EMI had all rights to the Beatle recordings but their right to issue on a record club was dependent upon, or through a record club, was dependent upon obtaining the consent of the manager of the group or the Beatles themselves.

Q You are now referring --

A To the 1967 --

Q -- to the 1967 agreement.

A That's correct.

Q Mr. Seider, referring to Defendants' Exhibit B, the January 26, 1967 agreement, can you refer to the paragraph that you were just talking about?

A On page 5, paragraph 5D, deals with record clubs under the 1967 EMI agreement.

Q How is that carried through into the 1969 agreements?

A Well, in the drafting of that particular agreement, in that article 3 dealing with distribution, we couldn't give a complete blanket grant of all distribution rights because that would have meant that the provision giving the manager or the Beatles themselves the right to veto any record club deal or any record clud issuance that EMI or its licensees wanted to make would have been wasted.

So what we did was we carved out of the blanket grant --

Q Excuse me, let me interrupt you for just a minute.

You are talking about Defendants' Exhibit C now and you are talking about the provision covering distribu-

tion under the 1969 Apple-Capitol agreement.

A I am getting confused on the exhibit numbers, but if C refers to the 1969 Apple-Capitol agreement --

Q That's correct.

A Than that's correct.

THE COURT: C-2.

Q Continue, please.

A Rather than grant a blanket grant unlimited unrestricted, we carved out that as an exception with the words "mail order direct to consumer" being the equivalent of club. That perpetuated from the 1967 agreement that particular restriction upon the rights of EMI or its licensess, just like we carved out in the 1969 agreement the reservation of the Beatle recording rights -- I'm sorry, the reservation with regard to certain Beatle recordings the aspect of the Beatles owed one record to United Artists in connection with a three picture deal and they had an obligation to give United Artists the sound track album of that third Beatle motion picture.

So that, again, was carved out.

Q Is that the subdivision (iii) under article 3, paragraph 1?

A That's correct.

Also, I think, Mr. Bergen, the way we structured

the agreement itself, physically structured the agreement, if you turn to paragraph or to section 2, II --

MR. SCHURTMAN: Which agreement?

THE WITNESS: Of the same agreement.

A Article II -- there does not seem to be a numbered page. I think it is page 10, your Honor.

Dealing with pressing --

THE COURT: Page 10?

THE WITNESS: That's correct. It doesn't seem to be numbered at the bottom, but it would follow. There are two pages following the last numbered page, which is page 8.

THE COURT: This is Article 2?

THE WITNESS: Article II dealing with pressing.

THE COURT: Okay.

A The first paragraph says that Apple agrees that during the term, all records processed and pressed for it in the United States from all Beatle masters will, except as provided in Section 1 (iii) of Article III and in Article IV below, be processed and pressed by the use of Capitol facilities.

Section 1 (iii) of Article III is the movie sound track exception, and Article IV is the exception dealing with licensed territories and record clubs. So that

any records, except for those two areas, namely, the record club, as Article IV, is entitled and the movie sound track album must be processed and pressed by Capitol.

Q Okay. That was carried through into Article III?

MR. SCHURTMAN: Your Honor, I am obviously not going to cross examine now, but may I suggest that you look at the defintion section of the contract for what the Beatles masters means.

THE COURT: Okay.

What is that?

MR. SCHURTMAN: Article II, Section 1 deals with Beatles masters, and if you will look in Article 1, definitions, page 5, you will see a definition of the term Beatles masters and I don't think that is involved in this case.

That has to do with an album of all Beatles.

THE COURT: I don't know the significance of tnat, I'm sorry to say.

What is the significance, Mr. Schurtman?

MR. SCHURTMAN: The significance is that Article II, Section 1, which Mr. Seider has just explained to you, has nothing to do with this particular case because it deals with --

THE COURT: He is saying it is another instances

of carrying over -- I guess it's another instance --

MR. SCHURTMAN: I thought he tied it in.

I thought he was trying to tie it in to --

THE COURT: You are not trying to tie it to this case?

Q Will you explain what you meant, Mr. Seider, when you were talking about the article II and its significance?

A That all Apple records, all Apple recordings have to be pressed by Capitol in the United States, except in two instances:

The movie sound track album and whatever is subsumed by Article IV.

MR. SCHURTMAN: I do object.

THE COURT: Can we possibly -- I mean, this is -- I think it is pretty attenuated.

I get your point to some extent. Let's try to move on and not bring up every possible --

Q During the negotiations that led up to the 1969 agreement, was the discussion with respect to record clubs, was an understanding reached on that?

A Yes.

Q And is that understanding set forth in Defendants' Exhibit OOOO?

A Is that the Gorty covenent?

Q Yes.

A That's right.

Q Can you point to the paragraph in Defendants Exhibit OOOO which covers that understanding?

A It's on the second page, and paragraph is entitled "record club," all initial caps underscored.

Q Was this memo of understanding signed by any of the parties?

A It was signed by Mr. Gorty Cove on behalf of Capitol and Alan Klein for the Beatles.

Q Prior to the time of this agreement - I am referring to the September 1969 Apple-Capitol agreement - were you familiar with how the Beatles records were distributed in the United States?

A Yes, I was.

Q As a result of the 1969 agreement, was there any change in the way the recordings came from EMI to Capitol?

A Yes.

Q Can you tell us what that was?

A Well, prior to the 1969 agreement the Beatle records came from EMI, who owned all the masters and the Beatles under contract, came to Capitol, I assume, through a license between Capitol and EMI.

Q Have you ever seen that agreement?

A No, I haven't.

And as a result of the change or the 1969 agreement, the flow of the rights or the flow of the product came from EMI through Apple and into Capitol.

In effect, Apple was to act almost as a conduit.

Q Did Apple pay any royalties to EMI for this license?

A No. In fact, the license -- there was no royalty payable from Apple to EMI or pressing fee.

I know that Capitol had paid EMI a pressing fee for the use of those masters that came through Apple into Capitol.

THE COURT: What you are saying is Apple didn't pay any fee?

THE WITNESS: Didn't pay anything.

THE COURT: To EMI?

THE WITNESS: That's correct.

Capitol, in fact, paid.

Q Can you briefly tell us in general terms how this worked?

A You are talking about -- I am a little confused what you mean by the "thing".

Q I mean the EMI through Apple to Capitol.

A The flow of rights?

Q Yes.

A Well, under the --

Q How it worked practically with a record?

A Okay. Let me just -- under the 1967 agreement EMI has the rights to all of the Beatles records individually and jointly.

It then licensed Apple New York. Apple New York, through the Capitol-Apple 1969 agreement licensed out to Capitol. Under that arrangement, Capitol would press and Capitol would distribute.

THE COURT: You are talking about after the 1969 agreement?

THE WITNESS: That's correct. I am describing the process.

THE COURT: Who would press?

THE WITNESS: Capitol pressed --

THE COURT: All right.

THE WITNESS: -- the records and it, in turn -- and, in effect, it bought, rather than have what you call the licensing deal whereby you license, you pay a royalty, we constructed the deal in such a way that Apple received a sort of fee or a monetary amount which was based upon a built up price, namely, there was a price that Capitol charged Apple for the manufacture of the records and that

Apple charged Capitol for the selling of the records, because what happened -- I am going too far afield -- Apple delivered to Capitol Distributing --

THE COURT: Why don't we --

MR. SCHURTMAN: Is this based on the contract?

THE WITNESS: That's the 1969 contract.

THE COURT: Why don't you hold all this. This is very involved. Can we wait?

A The monies were then --

THE COURT: Can't we avoid this, Mr. Bergen, please?

MR. BERGEN: Okay, your Honor.

Q Mr. Seider, do you know Morris Levy?

A Yes, I do.

Q When did you first meet him?

A I really don't recall.

I remember meeting Mr. Levy at U. A. I forget the year, but it would have to be after 1972. And I remember attending a dinner where Mr. Levy was honored.

Q Did you negotiate the settlement of the Come Together lawsuit with Mr. Levy?

A I spoke with him on the telephone and a settlement was arrived at.

Q We all know what the settlement was and that has

been testified to, but could you tell me what you and Mr. Levy discussed about Mr. Lennon using his best efforts to get a license from one of the Apple companies of non-Beatle masters?

A Well, my recollection was that Morris had agreed, in lieu of -- he had originally proposed as a means of settlement that John record a certain number of his songs, which, when I reported to John, he said he can't do that many songs because he doesn't know if he likes that many songs, which Mr. Levy has in his catalogues.

I then proposed to Mr. Levy, as an alternative, that Mr. Lennon record certain minimum of songs, the three songs, and that we try to obtain -- because I knew Mr. Levy was in the television packaging business -- obtain some Apple masters for his use in a television package and that failing that Mr. Lennon would record an additional two songs, one in 1974 and one in 1975.

Q What did you and Mr. Levy discuss about these non-Beatle masters?

A I merely -- it is difficult for me to remember that far back, except my recollection is that I could not obligate Apple -- the masters were owned --

THE COURT: Is this something you told Mr. Levy? That is what we want now.

THE WITNESS: It is my recollection that I told Mr. Levy that, that I could not obligate John to deliver these masters because he did not have the right to bind Apple and to obligate Apple because these masters were owned not by John but by Apple.

MR. SCHURTMAN: Which Apple?

THE WITNESS: I am sorry. They were owned by Apple -- it was confusing whether they were owned by Apple Capitol or Apple Corps, Limited.

Q Prior to agreeing to this settlement and specifically the provision having to do with the non-Beatle masters, did you get some kind of approval from the other Beatles?

THE COURT: Can I hear the question again.

(Record read.)

Q Turning to the Spector tapes, did you make any attempts to get the Spector tapes back from Mr. Spector?

A Yes, I did.

Q Can you describe those very briefly?

A I was in touch with Mr. Marty Machat, who was Mr. Spector's attorney --

THE COURT: I frankly don't see the relevance of this.

MR. BERGEN: Okay, your Honor.

THE COURT: Can you move on?

Q Did there come a time when you had a meeting with Mr. Levy about the come together settlement in 1974?

A I met with Mr. Levy on October 8, 1974.

Q Can you tell us how that meeting came about?

A Mr. Krasilovsky had written a letter to someone at Marshall, Bratter and then Mr. Sidney Shemel, I believe, may have called me and said that Bill Krasilovsky was trying to get in touch with me.

I don't know whether I called Krasilovsky or he called me, but whatever it was I was in a conversation with Krasilovsky. That was some time the early part of October.

He mentioned the fact that on the recently released Walls and Bridges album there had only been one Big Seven tune. And I explained to him what had taken place, and he suggested that I call Mr. Levy.

I got in touch with Mr. Levy thereafter.

Q And what was the conversation you had with Mr. Levy?

A It was on the telephone and I started to explain to Mr. Levy what had taken place, the situation with Spector.

And he said to me, "Look, I don't want to hear it from you, I want to meet John Lennon personally."

I said, "I don't know."

I was coming into New York and I would see if it could be arranged.

I then called Mr. Lennon and asked him if he would meet with Morris Levy to explain what had taken place with regard to the Spector record sessions and I asked John as a personal favor for me, because I mentioned to him the fact that both Mike Stewart and Mike Lipton, who were fellow workers with me -- one was the president of the company, one was the senior vice president of the company -- had introduced me to Morris for purposes of settling the action back in 1973. And Mr. Lennon agreed.

Then I called Mr. Levy the morning that I left from California for New York and told him I would meet with him the next day, and we arranged to meet for dinner on the 8th.

Q At any time during the conversations with either Mr. Krasilovsky or Mr. Levy, did you say that Mr. Lennon had breached the come together settlement agreement?

A No.

Q The meeting, you say, took place on October 8th?

A That is correct.

Q Who was present?

A Myself, John Lennon, Bernard Brown, May Pang, Morris Levy, and Phil Kahl was there for part of the time.

Q Did you have dinner at Club Cavallero?

A No, we did not.

Q Where did you have dinner?

A At the Benihana Restaurant.

Q And was it you and May Pang and Bernard Brown and Mr. Lennon who had dinner together?

A That is correct, the four of us.

Q Did you all go directly from the Benihana to the Club Cavallero?

A That is correct.

Q And did you all sit together during this meeting?

A That is correct.

Q And was everybody there during the meeting, except you said Mr. Kahl was --

A Everybody was there.

Q Will you describe what happened at the meeting as best you can recall, telling us who said what to whom?

A Well, we came in and we were shown to a booth on the left-hand side.

You go past the bar and you go past a stand and then there is a booth on the left-hand side sort of in a U-shape. And Mr. Levy -- I am not sure whether he was

there at the booth when we got in there, but we sat down and Mr. Levy was there and John and May and myself and Bernard and Morris and Phil.

I think they asked us what we wanted for dinner, and we explained that we had already eaten, and they cleared the table.

We exchanged pleasantries. Morris -- I think John said to Morris, "You don't look as old as I thought you would look."

And there was polite banter, like, in that kind of vein.

Morris mentioned the fact that some time in the '60s the Beatles had swam at a pool or on his boat someplace in Florida.

I then or myself and John, I forget whoever started it, but basically perhaps we were talking both at the same time or interchangeably, we told Morris, we realted to Morris the incidents dealing with the Spector record sessions and the attempts to obtain the Spector tapes.

THE COURT: You and Mr. Lennon both related this?

THE WITNESS: That is correct.

THE COURT: I wonder if we could again get your

memory of where everybody sat.

We have had it from another witness, but I want to get it again, if I could.

Q Can we have it where you walked in and where the booth was first?

A The booth was someplace on the left-hand side. I think it was the first booth or the second booth n the left-hand side.

THE COURT: What did you have, a U-shaped thing and two chairs out in front?

THE WITNESS: I believe so, your Honor.

THE COURT: Okay.

Let us assume we are looking at the U head-on and we got the two chairs nearest us.

Let us start. Who were in teh chairs? Facing the booth, who is in the right-hand chair?

THE WITNESS: I believe Mr. Levy was on the right.

THE COURT: Who was in the other chair?

THE WITNESS: I believe Phil.

THE COURT: Phil Kahl?

THE COURT: Phil Kahl, that is correct. I am sorry.

THE COURT: Now we get tothe booth.

Going around from Mr. Levy, starging at this right-hand side looking in, was somebody sort of sitting on the side there?

THE WITNESS: I don't know if he was actually at the side, but I know John was sitting, let's say, at 2 o'clock, May was sitting somewheres between 1 and 2, if I can use the clock as a sort of a guideline, I was somewheres, let's say about 11 o'clock and Bernard was 9 o'clock or thereabouts.

THE COURT: Wait a minute.

You were about --

THE WITNESS: In the booth going counterclockwise, your Honor, there was Lennon, May Pang --

THE COURT: Wait a minute. This clock thing doesn't help me very much.

THE WITNESS: Let me go counterclockwise, then.

THE COURT: I want to start with Levy.

Levy was sitting in a chair out in front?

THE WITNESS: That is correct.

THE COURT: I take it in this U-shape thing you could sit on the side or you could sit sort of in the middle in the long section or you could sit on the other side, right?

THE WITNESS: That is correct.

THE COURT: Was anybody sitting on that right-hand side near Mr. Levy?

THE WITNESS: Mr. Lennon.

THE COURT: All right.

Was anybody else sitting on that side? May Pang was next to him, right?

THE COURT: That is correct.

THE COURT: Was she sitting on that side or was she sitting around in the long section?

THE WITNESS: I just don't recall. I mean, I just don't recall, your Honor.

THE COURT: All right.

Next to her moving around counterclockwise, who was next?

THE WITNESS: I was sitting.

THE COURT: Where were you sitting? You were sitting on that long section at the back of the table or you were sitting on one of the side things or what?

THE WITNESS: It is hard, because -- I am trying to visualize whether it was just -- it is not a sort of -- I am not sure if it was like this like this (indicating).

THE COURT: A curve?

THE WITNESS: Yes. It could have been just an arc or --

THE COURT: Okay. Anyway, you were sitting next to May?

THE WITNESS: I was sitting next to May and Bernard Brown was sitting next to me.

THE COURT: Were you sitting in the center or a little bit left of center? Is that what you tried to indicate?

THE COURT: Yes, if you are looking at the table.

THE COURT: All right, that is fine.

Then Mr. Brown was sitting around at the other side, right?

THE WITNESS: That is correct.

THE COURT: Okay. I think I have it.

Go ahead, Mr. Bergen.

MR.SCHURTMAN: Your Honor, would it be appropriate for me to suggest a view by the Court of that booth? I think you may be very interested in it. It still exists in its old form.

THE COURT: Let us hold that. We will see.

Okay.

All right, Mr. Bergen.

Q Can you go on, Mr. Seider, describing who said what?

A Well, after we had gone through the Spector conversations --

Q How long did that take?

A I really don't know, Mr. Bergen. I mean, the whole evening was about an hour and a half, two hours.

We got there between 9 and 9:30, I believe. I believe we left before midnight.

THE COURT: I am sorry, you got there when?

THE WITNESS: Between 9 and 9:30, I believe.

THE COURT: Until midnight?

THE WITNESS: I know -- I think we left before midnight, your Honor.

THE COURT: All right.

Go ahead.

Q Could you continue after you finished talking about the Spector --

A Yes. After we discussed, you know, the Spector episode, et cetera, and a couple of stories were bandied about about Spector and his eccentricities, Morris said, "Well, I am out of pocket."

And it seems strange what he meant by out of pocket and I don't recall -- I know somebody said, "What do you mean by out of pocket?"

And he said that he didn't like the rendition

of Ya Ya. He thought that the rendition was a joke and he thought that he could have earned a lot of money as a result -- I mean, if the rendition had been better.

After that John got into a discussion or he mentioned the fact that we had discussed the various possibilities of exploting the Spector tapes that had been recovered, and John said that he had been able to salvage about six out of the nine or ten tapes that had been recovered from Spector and that he had been exploring talking to people, thinking over in his mind the best way to market merchandise these particular tapes.

He mentioned the fact that he had thought that maybe he might put it out as an EP,which is an extended play record.

I believe both Morris and I said we didn't think that in the U.S. there was a market for those kinds of records.

John mentioned the fact that he thought about possibly selling it through television and he was going to talk to the peopel at Capitol about what they thought about possibly doing it through television, and he mentioned the fact that he was bouncing these ideas off at some of the people at the Record Plant.

He thought it would be a way of, again, by

passing the critics, getting it to the consumer. There had been a lot of notoriety about Spector, about these recording sessions and the events which had taken place.

And at that particular point Morris said, "Hay, I am in television. Why don't you let me put it out?"

Then Morris went into some discussion of the -- how television enhanced careers. I think he mentioned Chubby Checkers. and the kinds of sales you get on television.

John asked if it was possible, and I think I indicated -- I believe I indicated that I thought it was doubtful, but that in any event he would need the consent of EMI. But it was a possiblity.

And then we got -- Morris said, "Who at EMI would you talk to?"

And I said, "Well, basically, Len Wood ran the record operation of EMI."

And he then said, "Well, when are you going to go seen Len Wood?"

And I said, "Not now."

Then we got into a discussion of what I would call the number of tunes that you put on televison packages.

Morris said that television packages had 20 cuts, and John said that you can't get good sound with

so many cuts on the record and he thought that if you cut down the timings of each selection at best you may be able to get 15 or 16 tops on something like that.

They got into a discussion. I didn't participate in that discussion myself, but they got into discussions of the kinds of songs of old rock and roll favorites and titles were bandied about.

Oh, at one point I remember, I think it happened early in the evening, before we even got into this whole discussion, we commented how nice the club was, and I remember Mr. Kahl gave both myself and John Lennon an application to join Club Cavallero, and we joined Club Cavallero then and there with the initiation fee being waived.

pm

Q What did you base the statement on that, when you said you needed EMI's permission was needed?

A Well, John was signed exclusively to EMI, and unless EMI gave permission for the granting of any exclusion to the exclusivity provisions of that contract the whole thing would be a waste of time, I mean --

MR.SCHURTMAN: Excuse me, is that something that he said to Mr. Levy or simply his reason?

THE COURT: What are you --

MR. BERGEN: I asked him what the basis was.

A I told Morris that EMI had all the rights to John Lennon's recordings and that the permission of EMI would have to be obtained.

Q What was Mr. Levy's response to that?

A Well, he asked me again, he asked me who do you see, who do you talk to EMI and I said Len Wood, and he knew Len Wood was in England and he said, "When are you going to England?"

You know they wanted me to go to England that night.

Q What was your response when he asked you to go to England?

A I smiled and I said I think it is a bit premature.

And the important thing was to finish the album.

Q Now, can you recall anything else that was said?

A I know that Phil Kahl and Bernard Brown at some pointin the conversation -- oh, I know that Bernard Brown had said earlier in the evening to Phil Kahl that he remembered Phil Kahl because Bernard, when he worked at Campbell-Connelly he met Phil Kahl because the companies with which Kahl was associated at the time was a publisher who sub-published a Campbell-Connelly. Campbell-Connelly being an English publisher. At some point in this evening Bernard Brown admired Phil Kahl's watch. He was wearing one of these digital watches and asked Phil where he had gotten it and Phil started to take -- and said he would like to get one and Phil took his watch off his hand and started to hand it to him and said "Here, take it. YOu can have my watch," and Bernard said, "No, no, I would like to buy one."

Then they made some arrangements to get together the next day so that Phil Kahl could get Bernard Brown a watch.

Q Was there any mention during the course of the

evening about Mr. Lennon's royalty?

A Not that night.

Q Was there any reference during the course of the evening to retail fulfillment centers?

A No.

Q Was there any agreement reached with Mr. Levy that night with respect to Mr. Lennon on doing an album for him?

A No.

Q Did you or Mr. Lennon tell Mr. Levy that John would do an album for Big Seven?

A No.

Q Was there any mention of Apple Records that night?

A No.

Q Did you hear Mr. Lennon tell Mr. Levy that I am the president of Apple Records?

A Could you just repeat the question? I am sorry.

THE COURT: Mr. Reporter, read the question back.

(Question read.)

A He didn't say that.

Q Did you or Mr. Lennon tell Mr. Levy during the course of the evening that John Lennon had the right to

do an album for Mr. Levy or one of his companies?

A No.

Q Did you or Mr. Lennon tell Mr. Levy that Mr. Lennon had not previously given television rights to his albums to anyone?

A We hadn't discussed that. I merely said to Mr. Levy that John was signed exclusively to EMI.

Q Was there any discussion during the course of that evening that the coming together settlement was kind of, you know, done away with and that there was a new deal replacing it?

A There was no new deal.

Q Was there any reference to the fact that the coming together settlement was finished with?

A No, we never discussed that settlement.

Q How did the evening break up?

A Broke up with Mr. Levy saying "When are you leaving for London? Why aren't you on the plane?"

And we left the Club Cavallero.

Q As you were leaving the Club Cavallero or at any time during the course of the evening did you or Mr. Lennon say, it is a deal, or we have a deal?

A No.

Q When was the next time you saw Mr. Levy?

THE COURT: Let me ask you this, two things: In the discussion of EMI having rights was there any differentiation at all in the discussions between mail order rights and other rights, or between U.S. rights and European rights, any specific breakdown by anybody about those subjects?

THE WITNESS: Not at all, your Honor.

THE COURT: Now, can you tell me why you particularly said EMI had the rights? Are you indicating you didn't mention Capitol?

THE WITNESS: I mentioned that John's records were released in the United States through Capitol or on -- I am sorry, on the Apple label through Capitol but that you have got to go to the source because if EMI said no he --

THE COURT: No, I want to ask you --

THE WITNESS: This is what I said to Morris.

THE COURT: All right.

THE WITNESS: I said because if EMI says no, Capitol can't say yes.

THE COURT: Wait a minute. You told Mr. Levy that Mr. Lennon's records were released on the Apple label.

THE WITNESS: In the United States distributed by Capitol.

THE COURT: What else did you say?

Just give me that again.

THE WITNESS: A[illegible] that if EMI said no, it wouldn't make any difference what Capitol says. Because EMI was the owner of the exclusi[illegible] rights to John's recordings.

THE COURT: Give me just a second. But that wasn't correct, was it? Capitol owned the exclusive rights to Mr. Lennon's recordings in the United States with those specific exceptions that we noted, whatever they meant.

THE WITNESS: But EMI would have to -- Capitol was the distributor, EMI would have to consent to anything that was done even by Capitol. There is a provision in the '69 agreement that says no rights can be assigned without the consent of EMI. So in the '69 agreement you needed the consent of EMI.

THE COURT: You are saying to me that even Capitol couldn't assign any rights without the consent of EMI?

THE WITNESS: That is correct.

THE COURT: All right.

THE WITNESS: No, that's the wrong one. Give me the '69 agreement. The Capitol-Apple '69 agreement.

THE COURT: Here it is (handing).

THE WITNESS: It is this one. It is the manufacturing and distribution agreement.

THE COURT: Oh, Capitol-Apple. You are right. C-2. C-2, that is right.

THE WITNESS: On page 36, I believe.

THE COURT: What paragraph?

THE WITNESS: Paragraph No. 6.

"Neither party may assign this agreement nor any part thereof or rights thereunder to any person without the written consent of EMI except that Capitol and/or distributor may without such consent assign this agreement in toto to its shareholder or shareholders to a parent or subsidiary corporation or to any person acquiring substantially all of such assignor's assets but no assignment shall relieve such assignor of liability hereunder."

THE COURT: All right.

MR. BERGEN: May I just ask him one more question, your Honor?

THE COURT: I would like to break for the afternoon.

BY MR. BERGEN:

Q Wasn't that in effect the same provision as the provision in the EMI-Apple license?

THE COURT: All right. We have had that testimony.

A It is substantially the same.

THE COURT: All right. Could you give me the case you cited, the Supreme Court case, Mr. Schurtman?

MR. SCHURTMAN: Yes, your Honor. Do you want the citation of both cases?

THE COURT:Yes, please.

MR. PRETTYMAN: Could you read it out loud?

MR. SCHURTMAN: Yes. The decision by Judge Duffy is 59 FRD, 644. The name of the case is American Optical Company, and the decision he relies on is Waterman v. McKenzie, 138 US. 252.

MR. PRETTYMAN: 252?

MR. SCHURTMAN: Yes. Do you want the unofficial citation?

THE COURT: Are there any other cases you are relying on for this point?

MR. SCHURTMAN: We have a number of cases, your Honor. We are just in the process of pulling them together.

THE COURT: Well, why don't you pull those together and give me those tomorrow?

MR. SCHURTMAN: All right, your Honor.

THE COURT: All right.

10 o'clock tomorrow gentlemen.

(Whereupon, an adjournment was taken to Friday, January 23, 1976, at 10:00 a.m.)

cmbr 1

Big Seven Music Corporation,
et al.

v. 75 Civ. 1116

John Lennon, et al.

New York, New York

January 23, 1976
10:15 a.m.

- - -

(Trial resumed.)

- - -

(In open court.)

THE COURT: Good morning.

MR. SCHURTMAN: Your Honor, may we call a short fact witness out of turn?

MR. PRETTYMAN: Your Honor, first I have just a preliminary matter. You will recall yesterday on Exhibit B we had the original but we did not have a very clear copy. I now have clearer copies of Exhibit B and I would suggest in accordance with your Honor's suggestion that we substitute this clearer copy for the one that was previously marked and which was very difficult to read.

THE COURT:All right. That is fine.

Then I will give you back Exhibit B-1. This is the one that is presently under seal, and I think you had better keep custody of it, and I will take --

cmbr 2

MR. PRETTYMAN: Well, this new copy of course will also be under seal because it does not have the -- it has all the deletions gone. I mean it is --

THE COURT: Well, we will now allow Mr. --

MR. PRETTYMAN: It is an unexpurgated copy.

THE COURT: Exhibit B is the expurgated version.

MR. PRETTYMAN: Well, I am sorry then, this should be B-1 because this is the unexpurgated.

THE COURT: I am going to give you back Exhibit B-1 now. Now I don't want the unexpurgated version floating around loosely, and I think you had better keep custody of it.

MR. PRETTYMAN: Right.

THE COURT: Now, if you could then at your convenience give me a clear copy of Exhibit B which is the expurgated version I think that is the safest way to proceed.

MR. PRETTYMAN: All right, fine, your Honor. Because I noticed that B-1 is actually fairly clear.

THE COURT: Yes, it is.

MR. PRETTYMAN: All right, then, I will see that this copy that I now have is expurgated and we will substitute that in due course.

THE COURT: All right.

All right, Mr. Schurtman.

MR. SCHURTMAN: Yes. I call Mr. Crocker. Mr. Crocker, will you take the witness stand.

F R A N K I E C R O C K E R, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANZER:

Q Mr. Crocker, where do you reside?

A 10 East End Avenue, New York.

Q What is your occupation?

A Radio announcer.

Q What station?

A WBLS.

Q Where is that station located?

A 801 Second Avenue.

Q How long have you been a disc jockey?

THE COURT: What is the name of the station again?

THE WITNESS: WBLS.

Q How long have you been a disc jockey?

A About ten to twelve years.

Q Do you know Morris Levy?

A Yes, I do.

Q How long have you known him?

A About eight years, I guess.

MR. BERGEN: Your Honor, could we have the witness speak up a little bit?

THE COURT: Yes. I will tell you, Mr. Crocker, it is very hard to hear in this room. Just speak so everybody in the courtroom can hear you and take your time.

Q Is your relationship with --

MR. BERGEH: Excuse me, Mr. Kanzer. I didn't get the last answer.

THE COURT: Let us have the reporter read it.

(Read.)

BY MR. KANZER:

Q Is your relationship with Mr. Levy a business or a social one?

A Both, I guess.

Q Do you know John Lennon?

A Yes, I do.

Q How long have you known him?

A About a year. I don't really know him, I made his acquaintance one night.

Q Could you tell us when you first met Mr. Lennon?

A At Club Cavallero about a year ago last

November, I guess.

Q Could you tell us the circumstances under which you met Mr. Lennon?

A I was out and I happened to be in the Club where Morris Levy and John Lennon were having dinner, and I joined them afterwards. I was introduced to John by Morris Levy.

Q Do you recall approximately what time you joined Mr. Lennon and Mr. Levy?

A 10 or 11 o'clock in the evening.

Q Was anybody else sitting with Mr. Levy and Mr. Lennon during the time that you were with them?

A A young lady who was introduced to me as May Pang.

Q As best as you can remember would you tell us what took place while you were sitting with Mr. Lennon, Mr. Levy and Miss Pang, telling who said what and to whom about what.

A We were talking about music, music business. We were talking about a new album that John was doing. My understanding is that we had a joke about it because Morris was going to put the album out he was going to sell it on TV, I was going to have to pay $45 for it.

MR. PRETTYMAN: Your Honor, could we -- the question was who said what to who and now we are into the kind of general --

THE COURT: All right, Mr. Crocker, we have had this situation with other witnesses. It makes a difference, or it may make a difference in this case exactly who said what, and as difficult as that may be to remember, just take your time and try to think back who it was that said different things.

Now, if you can't remember it in that fashion, tell us, you know, as you can remember. But try at first to

remember exactly who said what.

Now, go back.

A Morris told me that he was going to have an album out on John and it was going to deal with oldies.

Q Was that statement made in Mr. Lennon's presence?

A Yes.

Q Did Mr. Lennon at any time make any reference to the album to which you were referring?

A Yes, we had discussed an interview, I was going to play the album on the air --

THE COURT: Wait a minute. When you say "we", was it Mr. Lennon speaking or you speaking or what?

THE WITNESS: In this time John and I were talking to each other about an interview. I said I'd love to have an interview with him. I think it would be a coup in New York and I would like to hear more of it, or I would like to hear it and we would get together and do the interview.

He gave me his telephone number and I was going to call him about it.

Q Did Mr. Lennon agree to have you do a first interview with him?

A I don't know if it was first, but he agreed that

we were going to do an interview with the album.

Q Now, during the time when he referred to this album, did he refer to it in any particular way or describe what was on it or make any references to the album?

A Yes, he said Stand By Me was one of the cuts that was going to be on it. Be My Baby was the other one. And it was referred to as an album that would be sold on television and there wouldn't be any promotional copies, you would have to pay for it. And I guess it was generally referred to as Mr. Levy's, Morris' album.

Q Was there any discussion as to when you might be able to hear any of the selections that would be on this album?

A Yes, the next day.

Q Who said what about listening to the album?

A I guess I had asked if they had an album with them, and they said no, and I could come up to Morris' office the next day and hear it, which I did.

Q Did Mr. Lennon ultimately give you an interview on his album?

A No.

Q Have you ever done any interviews with other recording artists?

A Yes, I do it frequently.

Q Could you give us the names of some of the artists whom you have interviewed on your radio station?

MR. BERGEN: How is that relevant, your Honor? Objection.

THE COURT: I don't really see that.

MR. KANZER: I think your Honor, it is relevant to the question of whether his station and his program were once on which it is likely that Mr. Lennon would have been willing to give an interview.

MR. BERGEN: Objection. I don't see how the fact that --

THE COURT: All right. Overruled.

Q Could you tell us some of the recording artists whose interviews you have conducted on your station?

A So many. Just about all.

Rollin' Stones, Elton John, Aretha Franklin, Temptations.

THE COURT: Okay, we got them.

MR. KANZER: I have no further questions.

THE COURT: All right.

Cross examine.

CROSS EXAMINATION

BY MR. BERGEN:

Q Mr. Crocker, my name is James Bergen and I represent John Lennon and Harold Seider.

How long did you say you have known Mr. Levy?

A About eight years.

Q And you say this is an association and a business relationship?

A Yes.

Q When did this meeting or this time you met John Lennon take place?

A One night after I got off in November last year.

Q November when?

A 1974 or five -- four.

Q Prior to that time you met John Lennon and Mr. Levy, how often did you see Mr. Lennon before that meeting?

A I happen to eat in one of the clubs that Morris Levy eats in, so maybe once, twice a week I have dinner in that club and I would see Morris.

Q Is that the Club Cavallero?

A Yes.

Q Are you a member of the Club Cavallero?

A Yes, I am.

THE COURT: You still eat there and you still see Mr. Levy about once or twice a week?

THE WITNESS: If he is there. I go in there once or twice a week. If he's there I see him.

Q Since that time, how often have you seen Mr. Levy?

A Not as frequently, because I'm living part of the time in California.

Q How about during the early part of 1975, say the first six months, how often did you see Mr.Levy.

A About once a week, I guess, twice a week.

Q Did you go up to his farm at all?

A Yes.

Q How often?

A I have been up this farm about four, five times.

Q And would you say that during the first six months of 1975, you saw Mr. Levy on a fairly regular basis?

A I guess you could say that.

Q And when you went up to the farm, did you spend the whole weekend there?

A Sometimes.

Q In addition to being a radio announcer at WBLS, aren't you also the program director?

A Yes, I am.

Q And can you tell us what the program director does?

A Sets schedules for disc jockeys, pick records --

MR. SCHURTMAN: Your Honor --

THE COURT: Wait a minute.

Mr. Schurtman?

MR. SCHURTMAN: This is more in the nature of discovery, somewhat similar to when I was examining the witness --

MR. BERGEN: I don't believe it was at all. He said he was a radio announcer and I asked him what else he did there.

THE COURT: These questions are pointed up. I don't think anybody is wasting any time right now.

MR. SCHURTMAN: All right.

THE COURT: Okay.

Q Can you tell us what a program direct does?

A Sets a personality for a radio station, hires

disc jockeys, sets schedules, review commercials and pick music.

Q Does the program director also pick the records that are played?

A Yes. I said picks the music.

Q Have you ever had any business dealings with Mr. Levy with respect to whether any of Roulettes records are played on WBLS?

A Would you say that again, please?

MR. BERGEN: Would you repeat the question for the witness, please.

(Record read.)

A Could you explain for me what you mean by "business dealings" with Mr. Levy?

Q Have you ever played any of Roulette's records?

A Yes, I have.

Q Do you ever have any business meetings or any meetings with Mr. Levy or anybody from Roulette with respect to whether and what Roulette records you will play on WBLS?

A Not with Mr. Levy directly. Mr. Levy has promotion people that send records out.

I have talked to him about records, but I usually deal with -- what's his name? -- Phil Carl's brother, which is -- I don't remember his name. Joe Kolsky usually calls

me and sends records.

Q What type of a radio station is WBLS?

A It's basically black music.

Q Rhythm and Blues? Is it that kind of a trade term for it?

A Basically, in there.

Q You said something about how the disc jockeys or the radio stations were going to have to pay for this record?

A Yes.

Q Isn't that a little unusual?

A Yes, it is. That's why I thought it was a great idea.

Q You thought it was a great idea that the radio stations would have to play the record?

A Yes. It would make news.

Q In your experience as a disc jockey of ten to 12 years, have you or any radio station you ever worked for ever paid for any record?

A Yes.

Q When?

A I have many times.

Q I am talking about paying for a record to play on the air.

A Yes. I have had to buy records to play on the air.

Q You mean the record companies won't give you a promotional copy?

A No. I had to go and buy them.

Q No, that isnot the question I asked you.

Is it your testimony that the record companies won't give you a promotional copy for nothing?

A Yes. Some companies will not give you them. It depends on what the record is.

Q During this evening at the Club Cavallero, can you tell me exactly, as best you can recall today, what John Lennon said?

A We talked about doing the interview.

I said that I had admired them for a long time and I would really like to sit down and talk to them, I think it would be good for me and the station.

He had said something to me about something I had said on the radio maybe about five or six years ago, which surprised me because I didn't even known he knew I existed.

And we just started talking about music and different things and I guess whatever people talk about at a table after having dinner and drinking.

Then we talked about that particular album, and

that was it, that it was great that disc jockeys were going to have to pay for them, there would be no promotion.

Q Who said that?

A All of us did that were sitting there. It was just a discussion at the table.

Q You mean you and Mr. Levy and Mr. Crocker and May Pang, you all said that.

A Mr. Lennon.

I don't know if May Pang did. I know that we did.

MR. SCHURTMAN: Did you leave out Mr. Lennon on purpose?

MR. BERGEN: Do you have an objection or --

MR. SCHURTMAN: Yes, I do have an objection. If he is going to summarize the witness' testimony and deliberately leave out Mr. Lennon's name, I object.

THE COURT: All right. Let us go back over that, Mr. Bergen.

This really isn't all that clear anyway.

MR. BERGEN: That is all I am trying to do, your HOnor, is clarify it.

THE COURT: Okay, let's get it clarified.

Q Can you tell me again, Mr. Crocker -- you have been kind of general about what was said -- tell me exactly

what you recall John Lennon saying about this interview, about the album.

A When Morris was talking about the album, he told me the concept of the album, he was going to sell it --

THE COURT: You are saying Mr. Levy?

THE WITNESS: Mr. Levy was going to sell the album via TV, radio, I guess; that there were going to be no promotional copies.

At that point everybody laughed, because I laughed, and he says, "Even you, even though you are going to do the interview, even you are going to have to pay for it so you got to give me a check," because I said if I was going to do an interview with John I would like to do it like I do with all big starts, I like to play the whole album, and I thought at the time that the album -- and I said this -- that the album, it would be easy to do it beca because the tunes had been recorded before, they were oldies, most of which were recorded by black artists.

And John said he would do it, we would have the interview. When we talked about the album, we talked -- we referred to it as Morris' album.

I don't remember what the name of the album was.

MR. PRETTYMAN: I object.

Q When you say "we" who referred to it as Morris'

album?

A John, myself --

Q What did John Lennon say on that --

THE COURT: Let him finish. You asked him who referred to it as Levy's album and he started to answer.

Who referred to this as Levy's album?

THE WITNESS: John and myself and Morris. The three of us was in the conversation.

Q What exactly do you recall John Lennon saying on that subject?

A That he would do the interview, and he gave me a telephone number to call him.

Q What did he say about this being Mr. Levy's album?

A That's what we referred to the album as, Mr. Levy's -- "the album I'm doing with Mr. Levy."

Q Mr. Crocker, I asked you, what did Mr. Lennon say on that point?

A He said, "The album I am doing with Mr. Levy or Morris' album."

THE COURT: You may not like the answer but he is answering you.

MR. BERGEN: He keeps saying "we" and I want him to answer.

THF COURT: I disagree with you. He has got to tell it the way he recalls.

Let us have this read back, the last three or four questions.

(Record read.)

MR. BERGEN: I have no further questions of this witness.

THE COURT: Any other questions?

CROSS EXAMINATION

BY MR. PRETTYMAN:

Q Did he refer to Morris as Mr. Levy throughout the evening or was it just in connection with this one conversation?

A Would you say that again, please?

THE COURT: I don't understand that question.

Q In your last answer you stated "The album I'm doing with Mr. Levy," and I am asking you whether he consistently referred to Mr. Levy as Mr. Levy throughout the evening or whether he sometimes referred to him as Morris.

A I think it was both.

Q And not Mr. Levy?

A It was both, Morris and Mr. Levy. That's what I call him too.

Q I see.

Sometimes you refer to him as Mr. Levy, sometimes as Morris?

A Yes.

Q Can you give us any idea what time during the month of November 1974 this was? That is, was it during the early part, the middle part or the late part?

A I could only guess that it was someplace early to middle part.

Q And did you call Mr. Lennon? He gave you his telephone number. Did you call him?

A Yes.

Q Did you ask him to do the interview?

A I never spoke to him. I spoke to lady's voice, it could have been a service, it could have been someone else, it could have been May Pang. I don't know who it was.

Q How long after the November meeting did you call?

A Probably the same week.

Q And did you leave a message for him to call you?

A Yes, I did.

Q Did you leave the message that it was because you wanted him to appear on the program?

A I may have stated that. I don't remember.

Q And you got no call back from anybody?

A No, I didn't. Or I think when I called -- because I called the second time, that call was returned, I wasn't there, somebody else called. I don't remember.

Q Do you know who returned the call the second time?

A No, I don't.

Q What was the message that was left,

Mr. Lennon called?

A It wasn't a message for me. I got the message when I called back the second time. I called more than once.

Q And what was the message that you got when you called back the second time?

A "I think your call was returned," because I called, someone else answered, either a service or a young lady, and I left a message and I think -- I think John was sleeping or something at the time.

I said, "Would you have him get back to me?"

And I was going to talk to him about when we could do it. And I think I called back another time, "We tried to call you and you weren't in," or something like that.

Q Was that a third call or --

A No, that was the second time.

Q And you got no call back?

A No, not after that.

Q Do you know May Pang's voice? Could it have been May Pang on the phone who was talking to you?

A It could have been.

Q In the discussion about your paying for the album, was this a kind of joking reference by Mr. Levy to

the effect that "This record is so good we will even make you pay for it," or was it a discussion of a plan which apparently had already been made actually to make disc jockeys pay for this? Do you recall?

A I think the way it was explained to me is that not only that disc jockeys would have to pay for it, but I think it would raise some clammer in the trade that an album like this would have to be paid for by radio stations, because I think it is something that every program director or disc jockey would want to have right away, would want to be first with or whatever, but you'd have to pay for it.

Q My question is really related more to when it first came up.

Did it come up in a kind of jocular or amusing fashion or did it come up as something which had already been decided upon?

A It seemed like something it was decided upon.

Q It was part of a definite plan that had been settled upon?

A Yes, yes.

Q Have you gone over this incident with Mr. Levy since it occurred and since this lawsuit has been filed?

A Yes, I have.

Q And have you spoken to him on a number of occasions about it?

A I think twice, three times.

Q Were his lawyers present?

A Once.

Q And was that in his office?

A No, it wasn't. It was at the club.

Q Which one of his lawyers was present?

A This one (indicating).

Q Mr. Kanzer?

A Yes.

Q Was the meeting arranged in advance to go over this?

A Yes. They told me they wanted me to look over my deposition again.

Q Look over your deposition?

A Yes. Something I had signed, I had written out.

Q You had signed something under oath?

A I don't know if it was under oath, but I did sign something.

Q May I see that, please? Do you have it with you?

MR .KANZER: Yes (handing).

Q And was the time that you spoke to Mr. Levy about your testimony before or after that meeting at the Club Cavallero with his attorney?

A It was several months ago. I guess a month ago or so.

Q But was it before or after the meeting at the Club Cavallero with his attorney?

A Before.

Q Before? In other words, you spoke to him first alone and then you later had a meeting at the Club?

A He called me on the telephone and told me what was going on and asked me to come in because I was sitting at the table, he said he was having some problems and would I do this for him, because I didn't want to come to court. I was out of town. So I gave him that.

Then they said you are going to have to come to court, so -- I received a subpoena a couple of weeks ago to come to court, so I came back from California.

Q And would you just tell us very briefly what Mr. Levy told you about the dispute?

A That there was some dispute with another record company and himself and he said, "I put a lot of time into the album and I am going to lose it and I'd appreciate

it if you would, you know, tell your side of the story."

He said, "You don't have to do anything, just come in and tell the truth about what you heard."

Q And you then went over with him as you have today what you were going to say?

A No, I didn't.

I gave that to his attorney several months ago.

Q Who actually prepared this affidavit?

A I don't know.

Q I mean, did you sit down --

A I said it -- I told this attorney, my side of it, he asked me what I overheard, I said it and he wrote it down, so I guess it was him that wrote it down.

Q And then he came back to you with the written form --

A And then I read it over and I said it was the truth as far as I knew and I signed it.

Q Did you make any changes in it after you read it over?

A No, because at first I -- I left town, I think, afterwards. I didn't make any changes in it. But I didn't sign it at first.

Q Pardon me?

A I didn't sign it at first because I wasn't

here and I came back.

Q But after the first time you saw it in written form, did you make any changes before you ultimately signed it?

A Not that I remember, no.

MR. PRETTYMAN: May I have one second, your Honor, because I haven't seen this before?

THE COURT: Sure.

(Pause.)

Q I note in paragraph 5 of this affidavit, Mr. Crocker, you say, and I am quoting, "Mr. Levy jokingly said the album would be so successful that he won't give free copies even to radio stations, he would make them buy the album at $4.98 each if they wanted to play it on the air."

Does that refresh your recollection as to whether the discussion about paying for it was a joking or jocular suggestion or whether it was part of a serious plan that had already been decided upon?

A Well, my interpretation of it that you can joke about something that is already a plan or the truth.

I think it was -- when I say jokingly is because I laughed, because it is something you don't ordinarily do on a big album like this.

MR. PRETTYMAN: Just, again, one moment, your Honor.

(Pause.)

MR. PRETTYMAN: I have no further questions.

THE COURT: All right.

MR. SCHURTMAN: Your Honor, may we have the affidavit that was used to cross examine Mr. Crocker marked for identification.

THE COURT: Yes, you can have it marked, but in your redirect if you want to.

Mr. Grumbach.

CROSS EXAMINATION

BY MR. GRUMBACH:

Q Mr. Crocker, how would you describe this evening? Was it an evening in which people sat around a table and a lot of drinks? Would you call it a drinking evening?

A No.

Q Can you remember how many drinks people had while you were there?

A About, yes.

Q Excuse me?

A Yes, I can. Ican.

I don't drink that heavily, so I would know --

Q How about the other people?

A Let me finish my answer.

I don't drink that heavily, so if someone was drinking that heavily I would have left.

Q Did you close up the place around 4 o'clock in the morning?

A Around 3, 3:30.

Q Will you tell me about your visit to Mr. Levy's office the day after or perhaps the same -- was it later in the day of the morning that you left the Club Cavallero that you went to see Mr. Levy?

A Yes.

Q Can you tell me how you heard the album?

A I went into the office to hear it, find out what was on it, because I had planned --

Q I am not asking you why, I asked you how you did it.

A I went up to the office and listened to it.

Q Yes. Who played it?

A Mr. Levy did.

Q Tell me how he did that.

A He played it on a tape.

Q What kind of a tape?

A Recorded tape.

Q Do you remember the size of the reels?

A No, I don't.

Q You testified at the beginning that you had a business and an association relation with Mr. Levy?

A Yes.

Q Can you tell me precisely what business relations you had with Mr. Levy or with any of his companies?

A The business is at one time I might see Mr. Levy and Mr. Levy will talk about music or records, tell me to call Joe or he was hot on a record and he thought the record was going to make it.

Socially we didn't discuss music, we didn't discuss business at all.

Q But did you ever have any business transactions of any kind with Mr. Levy or any of his companies or anyone who you knew to be acting for Mr. Levy?

A No business transactions, only that they asked me to play their records, give me their records.

Q No financial transactions?

A No.

MR. GRUMBACH: I have no other questions, your Honor.

THE COURT: Do you have anything more, Mr. Schurtman?

MR. KANZER: No questions.

I would just like to have this marked for identification.

All right, we won't even bother, unless someone else wants.

THE COURT: It hasn't really been used.

All right. Will you step down, Mr. Crocker. Thank you.

(Witness excused.)

THE COURT: All right. Now do we resume Mr. Seider?

MR. BERGEN: Yes, your Honor.

THE COURT: All right.

H O W A R D S E I D E R, resumed.

DIRECT EXAMINATION (Continued)

BY MR. BERGEN:

Q Mr. Seider, I believe that we left off yesterday, we had finished with the October 8th meeting.

THE COURT: I wonder if -- I don't think yesterday you questioned Mr. Seider about any discussion he had with Mr. Graham about the issuance of Walls and Bridges. Maybe you did but --

MR. BERGEN: No, I didn't, your Honor.

THE COURT: Would you go into that, please?

MR. BERGEN: Allright, fine.

Q Mr. Seider, do you recall any discussions you had with Michael Graham about the recording and release of the Walls and Bridges album? And if you could place the time, please.

A I believe I did. And it was some time in the fall of '74. I don't know the exact date.

THE COURT: What was said?

Q Can you tell us what was said? I am sorry.

A I don't recall any specific words other than the fact that Michael commented on the fact that the Walls and Bridges album only had Ya Ya on it.

Q And do you recall what you said in response to that?

A My recollection is that -- I honestly don't recall other than probably just to comment about why it didn't have it. I mean it didn't have more than the Ya Ya composition on it.

Q Do you recall any discussion with Mr. Graham at any time about the Spector tapes and their disappearance and their retrieval?

A Yes. Again, no specific dates at all. I am generally in telephonic communication with Mr. Graham quite often as we discuss many of Mr. Lennon's matters and in connection with his recordings, in connection with his-- with the Beatles' settlement, Mr. Graham is working in connection with that.

Q Do you recall anything about any of these conversations that you had with Mr. Graham with respect to the Spector tapes?

A I related to him the fact of -- Michael was also interested in John's recording career and his records, and he would ask me how things were going. And I am sure

that I recounted to him, my recollection is at some point I recounted to him the Spector situation, and then the problems of the recording, the problems of trying to get back the album, the efforts to get back the album, the efforts that were made and the general difficulties that we encountered with Spector.

THE COURT: Well, what I am interested in is this: Mr. Graham testified that he had a conversation with you about whether the issuance of Walls and Bridges would affect, or breach, or whater it was, the settlement agreement, you know, that 1973 litigation.

Do you recall such a conversation?

THE WITNESS: I believe we did discuss it, your Honor, but we never used the word breach. Just the fact of --

THE COURT: I didn't mean to indicate that.

THE WITNESS: I am sorry. Yes. I mean the fact of John didn't have three songs in the Walls and Bridges album.

THE COURT: And you discussed that with Mr. Graham.

THE WITNESS: That is correct.

And I said that John had put on the Ya Ya composition in his attempt to comply with that particular

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settlement agreement.

THE COURT: Well, how did that comply with the settlement agreement that required three songs?

THE WITNESS: WEll, again we had always understood at the time that the settlement agreement was entered into, and this is again one of the reasons why we had recommended to John the resolution of the infringement act, becauseJohn was at the time preparing, or had under -- had begun it, what I would call the Spector recording, and I remember Michael had come, he had sent me some papers, I had given John a copy of the catalog, or a list of songs that were in the Big Seven music catalog, and I had shown them to John, seen if there were any songs in it which would be helpful -- which John could record on that. Because John is -- in my dealings with John he doesn't, he will not record a song that he doesn't like just to satisfy somebody's requirement. And I remember the fact of, he looked over the thing and he saw Angel Baby and hesaid it's fine, he didn't mind recording You Can't Catch Me because he always like the song and we had discussed the song Ya Ya, but again John is -- it is subject to change. And so we couldn't commit, and he didn't want to be committed to any particular songs other than the fact that when we made the settlement we told John that he had to commit to

"You Can't Catch Me."

THE COURT: Well, look, Mr. Seider, I started out asking you if you remember, and Mr. Bergen asked you if you remember a conversation with Mr. Graham on the question of whether the issuance of Walls and Bridges had one song and not three songs of Mr. Levy's, how that would affect the settlement agreement.

Now, do you recall such a conversation or don't you?

A I know that Michael and I discussed it but I can't recall what I said.

THE COURT: Well, was anybody interested in complying with that settlement agreement or was it just forgotten?

THE WITNESS: No, your Honor, we were interested in complying.

THE COURT: All right. And who was in charge of complying with that settlement agreement?

THE WITNESS: When John recorded Walls and Bridges I reminded him because he had written the songs for the Walls and Bridges album and I had reminded him, and he had laid down ten tracks and I reminded him of the fact that we had the Big Seven settlement, and he said he has the songs down there and he wasn't going to -- couldn't put

on any additional songs, three additional songs to make it -- to comply with that. He didn't have the time on the album, or certain words to that effect. And he put down the Ya Ya track.

THE COURT: Well, when you say you reminded him, did you suggest that he put three songs of Mr. Levy's on Walls and Bridges?

THE WITNESS: I told him about the settlement, your Honor. I have never told John Lennon, and it would be presumption of me, I am sorry, to tell John Lennon what to put on an album.

THE COURT: All right. Now let us go back. The thing that I don't understand, Mr. Seider, is this: You were the lawyer who had negotiated with Mr. Levy the settlement of that litigation, were you not?

THE WITNESS: If I may correct your Honor --

THE COURT: All right.

THE WITNESS: I am a lawyer by training.

THE COURT: Right.

THE WITNESS: I am licensed in New York. I did not act as Mr. Lennon's lawyer.

THE COURT: All right. You were a representative of his and you spoke to Mr. Levy.

THE WITNESS: That is correct.

THE COURT: And we have this letter agreement that was worked out.

THE WITNESS: That is correct.

THE COURT: One of the few things in this case in writing, right?

THE WITNESS: That is correct.

THE COURT: Okay. Now I am interested in knowing if you can tell me whether you or Mr. Lennon or somebody else was taking some responsibility in seeing that that settlement agreement got carried out and if any changes or adjustments had to be made, seeing that Mr. Levy was informed of it. Was anybody doing that or wasn't anybody doing that?

THE WITNESS: I did not speak with Mr. Levy prior to the -- some telephone call --

THE COURT: Was anybody -- I mean was anybody responsible in seeing that that settlement agreement was carried out?

THE WITNESS: I believe I was, and I believe we attempted to carry out the settlement agreement, I reminded Mr. Lennon of the Levy settlement agreement during the Beatle negotiations in July when a sort of a heads of agreement were initialed --

THE COURT: That was in late 1974, is that

right?

THE WITNESS: No, this is something else. In July of 1974, in mid July. I think some time around the 15th -- somewheres around the 20th, 24th or thereabouts, your Honor. The Beatle -- there were meetings, Beatle meetings or Beatle settlement meetings in New York, and a sort of heads of agreement outlining the ultimate settlement which was then embodied in the much more elaborate form at the end, in December of 1974, was initialed by the four advisors to the Beatles. As part of those discussions at those meetings, and I remember it was very late at night, it was one of the last points, we had had very heated and extensive disputes, and I insisted that the -- that Apple agree to license to Mr. Levy's firm the required non-Beatle masters as provided for under the agreement.

THE COURT: All right.

Now if oyou would focus with me on the phase of the agreement requiring Mr. Lennon to record, You Can't Catch Me, and two other songs of Morris Levy's, will you focus on that with me?

THE WITNESS: Yes.

THE COURT: All right. Now, can I see the document, the letter agreement, Exhibit 11 or 12, or

whatever it is?

MR. BERGEN: Your Honor, may I ask him a couple of questions? I think I can clarify this.

THE COURT: Just a moment. Now, as you well know this letter of October 30, 1973, Exhibit 12, says that Mr. Lennon will record three compositions of Big Seven on your next album. Right?

THE WITNESS: That is correct, your Honor.

THE COURT: All right. Now, as it turned out the next album was Walls and Bridges, is that right?

THE WITNESS: My understanding at the time --

THE COUT: Please let me just question you and you answer my questions.

The next album that came out to the public was Walls and Bridges, is that right?

THE WITNESS: That is correct.

THE COURT: And Mr. Graham has testified that he had a discussion or so with you about whether that would create any problem about the settlement agreement.

THE WITNESS: That is right.

THE COURT: Do you recall in general that there was such a discussion?

THE WITNESS: That is correct.

THE COURT: All right. And he has testified that he and maybe you felt that it would be okay if the album containing the Spector tapes came out as soon as possible with three songs even though it did not -- it was not literally the next album.

THE WITNESS: That is correct.

THE COURT: All right. Now I have got a very simple question to you, and that is: Was there any discussion of letting Mr. Levy know about this at the time in order to avoid a flap about it?

THE WITNESS: I don't recall. I do know, your Honor, that I think in the conversation that I may have had with Mr. Krasilovsky, he said that he had been aware of the Spector problem.

Mr. Krasilovsky was Mr. Morris Levy's lawyer, or Big Seven's lawyer, and I seem to recall -- it could be maybe Phil Kahl had mentioned at the October 8th meeting that he had spoken to Marty Michat, who was Phil Spector's lawyer and he may have been aware of what was going on, of the problem with Spector. It was again quite common. The music business is a small gossipy type of business, your Honor, and people know what is going on, and we had made efforts to -- at least I had made efforts to retrieve the tapes. And it was either -- I think Krasilovsky said he

remembered, that he was aware of that problem.

I think Kahl may have mentioned that he had spoken to Michat, this was at the October 8th meeting, about the problem of Spector having disappeared with the tapes and the efforts to retrieve the tapes, et cetera. But I did not call Mr. Levy and say,"Mr. Levy, we have got a problem,we are coming out with another album, we are not coming out with this particular album." Because John had started the album, I believe some time at the beginning, or the first couple of weeks in July, and he works very quickly and as soon as he finishes the album he would like it out. And the album came out. We were trying to get the album out because I think Ringo was coming out with an album and some other artists and you always try to get into the marketplace before the deluge.

THE COURT: I can't understand. In other words, you have a letter which says things in plain language. Would you explain to me why when you knew that three songs would not be coming out in the next album, why you did not get Mr. Levy's consent or waiver or something down in black and white to avoid confusion about it?

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THE WITNESS: Your Honor, the Walls and Bridges album came out at the end of September. I did not participate, and I do not involve myself in Mr. Lennon's recordings. In fact, at the time I was not in New York, I was in California, so I don't know what Mr. Lennon was recording. I would be in telephone communication with him, or May Pang, and I remember having said to John we have -- this is at the end, to remind him of the Big Seven settlement. And I believe then he put on a -- put down ten tracks and he then put down the Ya Ya track.

But I did not call Mr. Levy to tell him that we did not have three tracks of Big Seven songs on the Walls and Bridges album, which was coming out. I didn't even know the release date of the Walls and Bridges album. I don't get involved in that area.

THE COURT: All right, Mr. Bergen, go ahead.

BY MR. BERGEN:

Q Mr. Seider, wasn't it the understanding of everyone that the album referred to in the Spector settlement, I mean in the settlement of the Come Together lawsuit was going to be the Spector oldies album?

MR. SCHURTMAN: I object to the form.

THE COURT: Sustained.

Q What was the understanding of the parties with

respect to what was going to be Mr. Lennon's next album?

THE WITNESS: I will sustain an objection to that. That isn't a proper question.

MR. SCHURTMAN: I will object. Continuing objection.

Q Was the Spector oldies album, or the Lennon-spector album that was being recorded in October and November of 1973 an album of old rock and roll songs?

A Yes.

Q And were the three songs in the Come Together settlement old rock and roll songs?

A That's correct.

Q And was the Walls and Bridges album an album of Mr. Lennon's own compositions?

A That's correct.

Q Would the old rock and roll songs have fit into that type of an album?

MR. SCHURTMAN: I object. I don't think this witness is qualified to answer that. They did put Ya Ya on the album.

THE COURT: Yes. I don't think this is very -- I will allow it but I don't think it means very much. What I am getting at, I mean it seems to me, and I will just express myself right here and now in a tentative way, that

we have a lawsuit that has arisen from some common garden variety failure of people to put things on pieces of paper. Now I think, you know, we wouldn't have to be sitting around in court with teams of lawyers and file cabinets of documents if a few elementary precautions had been taken along certain paths.

In the first place I cannot understand when you have got a settlement agreement and a lot of money involved in that settlement agreement, I cannot understand when it came time to put out the next album and the next album didn't have three records it would have been the simplest thing in the world to simply send a letter agreement to Mr. Levy and said, in order to avoid confusion, would you consent to amending this agreement to provide that the three songs are to be contained in such and such.

At the very least there was an opportunity for confusion if no clarification was entered into. Not only was that not done, nobody called Levy, which I cannot understand.

Now, of course when we come along to this October 8 thing we have the same pattern. We now have a lawsuit, an elaborate array of evidence, terribly involved evidence, because nobody bothered to reduce the thing to a piece of paper.

Put down so -- you know, a pen or typewriter. And

who loses or who wins I don't know but I cannot understand business practice like this. Then we come along, we have further confusion at the end of the story which is astounding to me, I don't know whether there was an agreement on October 8 or not.

I haven't heard all the evidence. But let's take the defendants' side of the case and assume there wasn't. Well, that means that there was still a settlement in effect. Did the defense comply with the settlement? No.

Then the rock and roll album comes out and they at the last minute delete one of the songs. Again, not bothering to ask Mr. Levy if this, you know, is okay or let him know.

I don't understand doing business like this. And all this does is create lots of work for lawyers and judges, and what we have is a whole elaborate array of litigation which is the result of the kind of snafou that I might engage in, you know, in dealings with my friend across the street, but not in solemn business transactions involving hundreds of thousands of dollars. I don't understand it.

MR. BERGEN: Well, your Honor, may I just be heard on that point?

First of all it is our position --

THE COURT: It seems to me anybody, whether its

John Lennon or Mr. Seider or Mr. Levy or whoever can manage to keep their obligations and keep them in order and keep them in writing and avoide these snafus.

MR. BERGEN: It is our position that there weren't hundreds of thousands of dollars involved in the Coming Together settlement.

Secondly, the only snafu was the fact that Mr. Spector disappeared with the tapes and I admit that Mr. Levy was not told that the next album was not going to be a rock and roll album. But first of all as far as the October 8 meeting, it is our contention there was nothing to reduce to writing that night. There was no agreement. And the last point --

THE COURT: Well that's Mr. Levy's responsibility.

MR. BERGEN: And the last point --

THE COURT: What we have, we have a pattern on both sides. We are not hearing this lawsuit here solely because of the confusion of one party. We have it because both sides were careless in their recording of the paper work and we have got to sort it out and get this lawsuit disposed of but I just wanted to let you know that's the reason for my question, Mr. Seider.

THE WITNESS: I understand, your Honor.

THE COURT: I think it was really -- these things

lead to gatherings like this in Court. Now, let's go on.

MR. BERGEN: I just want to respond to the other point where you said we just deleted the one song, very kind of cavalierly. That was about a week after Mr. Levy had very cavalierly told us that he was going to put out the album, you know, come hell or high water. I am going to do it and after he had been told by Mr. Seider in a face-to-face meeting you don't have a deal, after he went ahead --

THE COURT: Did that relieve you of not complying with the agreement that you thought was still in effect?

MR. BERGEN: Well, at that point Mr. Lennon --

THE COURT: What was your position, that Mr. Levy had his deal?

MR. BERGEN: No. No, but at that point Mr. Lennon after reviewing the tapes decided that he did not feel from an artistic standpoint that he could put Angel Baby on that track. And since Capitol was trying to put the album out before Mr. Levy got his album out, or at least to be in the market place at the same time there wasn't time to go back into the studio and record another Big Seven song just like there wasn't time to do the normal job that Mr. Lennon does on the album, the album jacket, the commercial and everything else.

THE COURT: Well, that's not much of an explana-

tion.

All right, let's go.

BY MR. BERGEN:

Q After the October 8 meeting, Mr. Seider, when was the next time you saw Mr. Levy?

A On October the 9th, the next day.

Q And where was that?

A At Club Cavallero.

Q Was this at a birthday party for Mr. Lennon?

A That's correct.

Q Did you discuss any business with Mr. Levy that night?

A No, I did not.

Q Was anything said about what had been discussed at the October 8th evening?

A I believe my only conversation with Mr. Levy was just to say hello to him and I didn't spend any portion of the evening with him. I sat at a rather large table with a lot of people.

Q When was the next time you spoke to Mr. Levy? After October 9th?

A I had telephone conversations with him during October. I remember one conversation towards the end of October. I had gone back to Los Angeles and I had received

a phone call from him saying that he had spoken to Alan Klein and Alan Klein said there was an exclusion in the contract and we did not need EMI's consent. And I said, what are you talking about? He says there's a mail order. And I said, but shit, that's the club rights and it's a Mexican standoff, and Alan is wrong. And Morris said, okay, Bobby, and then he just -- he hung up.

Q Do you recall whether in November you had any conversation with Mr. Lennon about Mr. Klein?

A I think it was sometime -- I was in New York, I believe and I had gotten a phone call from John and he said that he had been to see Alan, Alan Klein, and that Alan said that there was a -- we didn't need EMI's consent.

John said that Alan had told him that he didn't need EMI's consent to put the television package out, and because of this mail order exclusion. I told John that Alan was wrong, there was no such exclusion, and if there had ever been such an exclusion Alan would have used it to his advantage.

I just read, Mr. Bergen, I had said something back in my conversation with Levy on that Alan Klein situation. I had asked Mr. Levy not to talk to Mr. Klein because Klein was in litigation --

THE COURT: When did you tell --

THE WITNESS: This was sometime at the end of October. He had called me. I was in California and he called me --

THE COURT: That was the other conversation you mentioned before?

THE WITNESS: That's correct, your Honor.

THE COURT: And you told Levy not --

THE WITNESS: I told Levy not to talk to Klein. That he was aware of the fact that Klein and the Beatles and Lennon were in litigation, that Klein was, I believe, not terribly happy with me because I now was advising John, and that Klein would be a spoiler and a troublemaker and please don't talk to Alan.

I also had conversations with Levy, telephone conversation with Levy prior to my conversation with Mr. Lennon.

BY MR. BERGEN:

Q What took place in those conversations?

A Basically Morris would call and say have you spoke to EMI yet?

I said no, Morris, I am not going to speak to EMI until John has laid down the basic transaction and it's too premature.

Q Anything else in those conversations that you

can recall?

A If you can give me some dates, Mr. Bergen.

Q Were you speaking to Mr. Levy, you know, more than just like once a month during October and November?

A I spoke to him on occasions between sometime in October -- in October and until the next time that I met him, which was again the -- I had seen him at the Sergeant Pepper opening, which was on a Sunday, I think that was the 17th of November, and then I had seen him either the 18th or the 19th, but I had spoken to him before that time on the telephone.

Q Now, did you learn that at some point in November Mr. Lennon had finished the basic tracks on the album?

A I learned -- yes.

Q And do you recall when that was?

A It must have been in mid-November at sometime. Sometime in mid-November.

Q Do you recall the next time you met with Mr. Levy?

A I met with him on November 18 or 19. Either the Monday or Tuesday after the Sergeant Pepper opening. I had come to New York --

THE COURT: Sergeant Pepper opening was when?

THE WITNESS: I believe it was Sunday, November

the 17th. I think. It was at the Beaconi. And Mr. Levy had called Mr. Lennon's office to see if he could get tickets to the opening and I believe Mr. Levy was at the opening. I remember waving to him at the opening.

Q What was the purpose of this meeting with Mr. Levy?

A Well, I told Morris that I was coming in. I was coming in to meet with Graham and Dolgenos in connection with the review of some of the drafts of the Beatles' settlement. As I said before, like aheads of agreement were initialed in July and then the full papers were circulated and we had gotten a set of the papers and we were meeting to review those papers preparatory to a sitting down with all of the other Beatles advisors at the meeting to finalize the Beatles settlement.

THE COURT: Can we take a break -- are you finished with your answer?

THE WITNESS: I will finish after.

THE COURT: All right. We will take a break.

(Recess.)

THE COURT: All right.

Mr. Bergen, go ahead.

BY MR. BERGEN:

Q I think you were leading up to this meeting with Mr. Levy on November 18 or 19, and I asked you what was the purpose of that meeting.

A Well, I had spoken to Levy and I remember he had called me prior to that meeting and he had gotten information about the fact that Apple was looking to sell off its deleted records. This is the Apple non-Beatle catalogue.

The existing distribution arrangement for the Apple non-Beatle catalogue had expired and Apple had a large inventory of unsold records and we were looking -- the Apple people were looking -- this is Apple California, your Honor -- were looking to dispose of that.

In addition -- and Mr. Levy had called because one of his companies is something called, I believe, Promo Records, which is what we call in the business the cut out records business or schlock merchandise business, and also he had asked about the fact that United Artists, with whom I was associated, was planning to return under another agreement a certain number of albums called Let It Be, which United Artists had released and distributed as the movie sound track album, which was referred to in the September 1,

1969 Apple-Capitol agreement.

Morris asked for a list of the inventory and to be considered. And I said I was not handling it, that Michael Graham was handling it and that Michael and myself were planning to come to New York from where we lived and that I would get a list for him and deliver it to him.

And we agreed that we would meet at the Club Cavallero. We made an appointment for dinner.

And I went over to Club Cavallero, I believe it was either Monday or Tuesday after the Sergeant Pepper opening, which was the 18th or the 19th, and I went there with Michael Graham.

Q Was there any other reason for this meeting? I mean, had you planned to discuss anything else with Mr. Levy?

A Morris also said that we can discuss the EMI situation, because he wants to know had I spoken to EMI, and I said I hadn't spoken to them as yet.

Q Mr. Seider, did you and Mr. Graham go to the Club Cavallero together?

A Yes.

Q Do you recall approximately when you arrived there?

A I guess about eight or 8:30, somewheres in that area.

Q How long were you there?

A About an hour or so, an hour and a half tops.

Q And you had dinner?

A We had dinner there.

Q Can you describe from the moment you walked into the club what took place and who said what to whom and try to identify the different people?

A Well, I remember that I came into the club, but I couldn't get in pass the bar.

As you walk in there is a bar on the left-hand side and I couldn't get pass the bar because I didn't have a jacket and I was given a jacket from the check room.

Michael and I proceeded and we sat down. I believe Mr. Levy was at the table. And we ordered dinner.

During the course of dinner, this is while we ate, we discussed and we primarily -- when we sat down Morris said to me, "Have you called EMI?"

I said no.

He says, "Well, John has laid down the tracks, and don't you think you ought to call EMI now?"

I said, "Okay, I'll get in touch with EMI if John has finished the tracks."

I said, "But, Morris, what are you looking for? What can I say to EMI?"

And he started to say that this was a great idea, this is a great television package, it is a way of salvaging the Spector tapes, EMI can get the money.

I said, "But what are you prepared to give them? What do you make?"

And I started to explore with him various possibilities.

I remember asking him, "Would you consider a joint venture?"

And at one point -- he said in response to that, he said, "I would with John, but not with EMI."

I asked him about territory, and he said, "The world."

I said, "I doubt that EMI would ever want to consent to that, because after all, they own the rights and why should they give you the world for something that the already own?"

And he said, "Well, he would be sad with the U.S., but he would like to participate in the foreign."

I asked him about how long a time he had in mind, and I remember he said --

Q Excuse me.

How long a time for what?

A I'm sorry. How long a time of the right to

release the records from these tapes he was thinking about.

He says -- at first he said in perpetuity, and I said, "Well, that's nonsense," or something to that effect.

I said, "Would you consider a lesser period?"

He said, "Look, I would like at least ten years, but if you have to take five from them, I will take five."

We discussed or -- I don't know who initiated the discussion of the -- I'm sorry. I think it was in the context of he said a joint venture with John. And I said, "Well, how much do you make, because if it is a joint venture with John you divide the proviste 50/50.

Q Before you get to that, was there any discussion about TV mail orders and how that worked?

A Well, at some point Michael started to ask Morris how mail order works. And then Morris got into the dynamics of mail order. I was somewhat familiar with it as a result of some past experience in this business.

And Morris had indicated to Michael in response to his question that it is about four to six weeks, and he went through the step that -- he said it's a four to six week period in different geographical locations, specific territory areas, depending upon response, you go on to the

next one or you cut it off in the shorter period and then you go on to retail fulfillment.

I remember that was the first time that Morris had used the word retail fulfillment.

And then we got to -- at some point we got to a discussion of the money, and I think, again, as I said before, I think it was in the context of the joint venture.

Morris said he got between a dollar and $2.

Michael was asking him some questions insofar as, you know, "In the retail fulfillment, what do you pay? I mean, what do the advertising costs come out to?"

Morris indicated that it was about 25 per cent or a dollar and a quarter and --

Q 25 of what?

A 25 per cent of the retail price.

We also got -- at that particular point Morris said he thought that at 4.98 retail list price would be appropriate, because if there were only going to be 16 tracks, a single disc, that most TV packages sold for that particular price as a 4.98.

Q Where did the figure of the 16 tracks come from?

A Because John had recorded 16 or -- 15 or 16 tracks.

Q Was there any mention at this point -- strike

that.

Go ahead.

A Well, back in October they had been discussing 15 or 16 tracks, again, because of the time element.

Morris, when he was discussing back in October the number of tracks that normally go on a TV package, generally go, he had spoken about 20 and that's how the discussion arose with the timing and the timing effecting the quality of the tapes -- the quality of the record, et cetera.

I believe Michael asked him about --

Q When I interrupted you you were talking about the advertising being 25 percent of this 4.98.

A 4.98 price.

Morris was speaking about the retail fulfillment and he said in retail fulfillment they take about a dollar and a half profit.

Q Who is "they"?

A The retail fulfillment centers.

I did not need elaboration on it, I think Michael may have asked him what were retail fulfillment centers, and he answered the Woolco's and the K-Mart stores and food stores, things like that, because -- okay.

So Morris had said, "I get between a dollar and

$2."

And I said -- and I did some quick mathematics in my head, and if you take a $4.98 price and you take a $4.98, you take a dollar and a quarter off for advertising, you take off a dollar and a half for retail fulfillment and you take off $2, there is nothing left.

THE COURT: What is that again?

THE WITNESS: If you take off a dollar and a half for the retail fulfillment centers and you take off a dollar and a quarter for advertising and he has a profit of between a dollar and $2, then there is nothing left over.

So at that point we asked Morris to let's walk through the numbers.

THE COURT: Wait a minute.

Go over that.

$4.98 less a dollar and a half for retail fulfillment, less a dollar and a quarter for advertising?

THE WITNESS: Yes.

THE COURT: Anything else?

THE WITNESS: He said he has between a dollar and $2 as a profit.

And I quickly remember doing in my head, it's cookoo. If you take from $4.98, if you take a dollar and a half and a dollar and a quarter and a dollar minimum profit

to Levy, I think you have $3.75 in terms of these outside costs.

I'm familiar with the manufacturing copyright costs, AF of M. These are things I normally go through in analyzing deals on behalf of UA and I've always had a feeling that, you know, basically your basic costs ex-artist, witholut the artist, are about anywhere from 80 cents up, again, manufacturing costs.

And in my discussion with Morris, he started writing down the figures because I asked him to walk through the figures, the pressing costs are between --

THE COURT: In other words, you thought of these costs and you discussed them with Mr. Levy?

THE WITNESS: That is correct.

THE COURT: All right. What did you say about those costs?

THE WITNESS: What we did was, I said, "Well, let's walk through the figures."

And I remember we took the 4.98 price and we then constructed the various variables that enter into the coming down to a profit situation.

So we deducted the manufacturing and jacket costs, which we agreed would be in the area of about 55 cents, we discussed the advertising copyright mechanical royalties which we, for purposes of discussion, kept in the area of 24 cents, we discussed the AFM, the American Federation of Musicians' costs, which is about 1-1/2 percent of the retail list price, and that comes out to about six cents if you factor in, your Honor -- factor in the AF of M. In their contract it has a packaging allowance, what they call free goods, so although it is not a true 1-1/2 percent you factor it down and it is a little less, and we estimated that and we said six cents.

Then I said, "Well, what about freight?"

He said, "What about freight?"

I said at UA we generally put in a three percent freight factor, so that came out about 15 cents for freight.

That left --

Q How much did that leave?

A I seem to remember $1.23 left over, and I said to Morris, "If you take a dollar, then I have 23 cents left for John."

THE COURT:I am sorry.

You started with the 4.98, of course?

THE WITNESS: 4.98, that is correct.

THE COURT: Then you took out --

THE WITNESS: Take out the dollar and a quarter for the advertising.

THE COURT: A dollar and a half for retail fulfillment?

THE WITNESS: That is correct.

THE COURT: Then you take out 55 cents for manufacturing and jacket, right?

THE WITNESS: That is correct.

THE COURT: 24 cents royalties, right?

THE WITNESS: That is correct. Those were figures that we agreed to use. They weren't necessarily what it actually would be, but we used it.

THR COURT: All right. All right.

THE WITNESS: Because I was trying to make a point to Morris that there would be nothing really left over.

THE COURT: Let me get these figures.

Then AMF cost six cents?

THE WITNESS: Yes, I think we used the figure six cents.

THE COURT: Then freight 15 cents?

THE WITNESS: That is correct.

THE COURT: Let me just add it up.

That leaves $3.73, leaving 1.23 out of the 4.98?

THE WITNESS: That is correct.

THE COURT: Is that about where you were?

THE WITNESS: Yes.

THE COURT: What was your discussion?

THE WITNESS: I said to Morris, "If you take a dollar, there is certainly nothing left for John."

I said to Levy at thattime, and that was my recollection of the only discussion that we had with regard to John's royalty, I said, "I believe John's royalty is about 12 percent," and I said, "We have the Spector problem," because Spector -- and I mentioned to Levy that Spector was getting 3 percent as a producer royalty which would be shared

between EMI and Lennon --

THE COURT: Wait a minute. I am not with you.

You said you believed that Mr. Lennon's royalty is about 12 percent?

THE WITNESS: It's about 12 percent.

THE COURT: What was said after that?

THE WITNESS: Then I said we also have the Spector royalty which had to be paid --

Q Can you explain what that was, please?

A In order to get back the Spector tapes -- and I remember speaking at some point to Marty Michat about this in my efforts to get it back --

Q Mr. Michat is Mr. Spector's lawyer?

A That is correct. At least at the time.

I said I would be willing, because Marry had said, "Well, what about a royalty to Phil?"

I said, "Look, whatever Richard Perry had gotten on the Ringo album, I'd be satisfied on behalf of John with regard to Phil."

Q Richard Perry is a producer?

A Richard Perry is a producer and he had produced the -- he had produced the album called Ringo.

Q So that producer's royalty was just kind of

being used as a guideline by you?

A Yes.

At the time that I had spoken to Marty, I didn't even know what the Richard Perry agreement was, but I figured if it was good enough for Richard Perry it was good enough for Phil Spector.

Q So you explained to Mr. Levy what the Spector royalty was?

A That is correct.

And I said it is borne 50 percent by EMI and 50 percent by John.

And at the time of that meeting we had gotten -- I think the papers had been signed. Some drafts had been -- I had seen drafts of the agreement, so I was aware of what that particular arrangement was, because it was sent to me for approval and also for transmission to John for his signature.

Q Are you talking about the Spector --

A This is the Spector-EMI royalty agreement.

Q Was that Spector royalty discussed at all on October 8th?

A No.

Q Okay, will you continue, please.

A Then I said, "And what's EMI going to get out

of this?"

I said, "Look, EMI spent over $200,000 or approximately $200,000 on this." And I had been aware of what EMI was expected because I had asked Vaughn Burdick to keep me advised periodically as to what the record costs were on John's albums, not necessarily -- not merely with respect to this particular album, being the rock and roll -- I mean, being this oldies album, but also with regard to the Walls and Bridges album.

THE COURT: Let me just get this clear.

By the time of your meeting at the Club in late November, you had in hadn the Spector-EMI royalty agreement, is that correct? Had that been finished?

THE WITNESS: The drafts had been going back and forth. I had seen some of the drafts because they are submitted to me for review and it was out for signature. I believe it was signed around that time or that John had signed the papers at that time.

THE COURT: But the terms had been agreed upon?

THE WITNESS: The terms had been agreed.

Part of the problem on that, your Honor, is that the receiver of the Beatle partnership had to be a party to that agreement, too.

gtbr 7 Seider-direct

THE COURT: I am not clear what the significance of the Spector royalty would be.

Is this something that EMI and Lennon would have to pay out of what they made?

THE WITNESS: That is correct. That is correct.

The agreement provided that each would share 50 percent of that three percent royalty.

THE COURT: Go back, if you would: What, if anything, did you say to Mr. Levy about this Spector royalty thing?

THE WITNESS: I just commented on the fact that there was -- that it's cuckoo out of 23 cents John would have to take care of, A, EMI; B, Spector; there would be nothing left for him.

THE COURT: Okay, go ahead.

Q What did Mr. Levy say in response to that?

A Mr. Levy didn't say anything because he wanted -- he was more concerned -- I mean, he kept saying, "Go to EMI and talk to them and find out what they are willing to do."

Q Was there any discussion by Mr. Levy that he would reduce some of the figures or reduce his profit?

A No, except that Michael, in reviewing the

figures -- Levy was jotting downthe figures and we were just going over it and Michael had said to him, "Well, doesn't the advertising costs go down with the more units you sell? It's a variable factor, it is not a fixed cost as such, so that the per unit" --

Morris said, "Yeah, it did," but he got off the subject.

Q How did the meeting finally wind up?

A The meeting ended up with Morris saying, "Well, get in touch with EMI."

I said, "Yeah, I will get in touch with them as soon as I can."

And what happened was at some point during this conversation I remember somebody had come over and said that the gentleman was waiting at the bar --

Q What gentleman was this?

A A man-- Morris had said earlier, I believe, that some man was coming, one of his people was coming to get the list of what I call the delete inventory, the cut-out inventory.

When I had gotten to the restaurant I realized that I hadn't brought the papers with me, because I had prepared a schedule of the various titles of the non-Beatle inventory.

Then after the meeting with Morris began to break up, this other guy came over and we went back to the Marshall, Bratter office, where I had had the papaer, and both Michael, myself and this other gentleman went back to the Marshall, Bratter office.

Q Did you and Mr Graham discuss this meeting with Mr. Levy when you got back to the Marshall, Bratter office?

A Yes, I did, because when we went back I realized that I hadn't taken Levy's paper. I seem to recall that I took the paper from Levy -- he had given me the paper, you know, and I had put it in the jacket -- in the pocket of the jacket that I was wearing and when I returned the jacket to the hatcheck person I left the paper there.

And so when Michael and I had gotten back to the office and we had given these delete inventory papers over to Levy's representative, we sat down and Michael wanted to reconstruct the figures and I looked at it and he used the word "mail" and I remember striking out the word "mail" and I said that is a three percent freight factor,15 cents or so."

Q Mr. Seider, I show you Defendants' Exhibit GGGG, and ask you if that is the paper you have just been referring to (handing).

A That is correct.

Q And is that piece of paper where Mr. Graham reconstructed the figures?

A That is correct.

That is my handwriting, where it says the word "freight."

(Continued on next page.)

THE COURT: What is the number of that again, Mr. Bergen?

MR. BERGEN: Quadruple G, your Honor.

THE COURT: All right.

Q At any point during this meeting did Mr. Levy say to you, we have already got a deal?

A No.

Q Did you call EMI at some point?

A Yes, I did.

Q When?

A I called EMI some time toward the end of November. I remember the day after the meeting with Levy, I had come into the office and I had gotten a message that Levy had called and before I even returned the call I think he had called in again and he wanted to know did I call Len Wood at EMI and I said no, I hadn't but I will get around to it. I am not sure if I -- that day I placed a call to Len Wood, but I remember speaking to -- calling EMI some time at the end of November, and Len wasn't in and I asked to be transferred to Malcolm Brown and I asked Malcolm, I said to Malcolm I would like to talk to Len Wood.

I didn't get any return calls from Len Wood but I do remember speaking to Len Wood. It was either the

very end of November or some time in the early part of December. I spoke to Len.

Q Who is Malcolm Brown?

A Malcolm Brown is -- I understand him to be head of business affairs. He is a lawyer, or solicitor employed by EMI who I had been familiar with, and I think he may have been head of business affairs.

Q Now what was the discussion that you and Mr. Wood had in this telephone call?

A Well, I had called Len and I said to Len I'd like to talk to him about the marketing of the next Lennon album that he was recording, that we were planning to put out.

And I think Len said, could it wait until he gets to America or words to that effect. And he said that he was planning to come over some time in December and I said yes, I guess it could because it would be much easier for a face-to-face meeting with him. And he said he would be over some time in December and he would let me know.

Q Did you tell Mr. Levy about any of these telephone calls?

A I spoke with Levy after I had spoken with Wood; I had mentioned to Levy, because Levy was calling me pretty

often, and he mentioned to Levy my efforts to get in touch with Wood and that he hadn't returned my calls and then when I had spoken to Wood I remember having mentioned to Levy, I said I had spoken to Lennon and Lennon said he was coming over to the United States. And then I found out that Len couldn't come over, his plans had changed. I remember Levy called me some time, I think it was the very early part of December and he said that --

THE COURT: You are just going a little fast.

THE WITNESS: I am sorry.

THE COURT: You reported to Mr. Levy that you had a discussion in which Mr. Wood said he was coming to the United States?

THE WITNESS: That is correct.

THE COURT: And then you say that Mr. Wood's plans changed?

THE WITNESS: That is correct. Or Mr. Wood thought that he was coming to the United States.

THE COURT: All right. Then did you hear at some point that he wasn't coming?

THE WITNESS: Yes. I don't know whether I had spoken to Lennor or I found out from Malcolm. I seem to recall that I found out from Malcolm that his plans had changed that he wasn't coming.

THE COURT: And then did you then talk to Mr. Levy?

THE WITNESS: I spoke with Levy and I think -- I think about that time, I seemto recall a conversation with Levy and he said that a friend of his, Larry Uttal, who is the president of a company called Private Stock Records, was going to England and would be seeing Len Wood and could Larry Uttal be of assistance. And I said no, I didn't want anybody involved in this, it wasn't Uttal's problem and it wasn't Uttal's place to talk to Len Wood.

THE COURT: But you did report to Levy that Wood was not coming to the United States?

THE WITNESS: That is correct.

THE COURT: All right. Just take it up from there.

A This was some time in December, during the first or second week of December, your Honor. I believe he said, I think that he said he was going down to Florida -- MR. PRETTYMAN: Excuse me, your Honor. Do you want him to repeat the Uttal --

THE COURT: No.

MR. PRETTYMAN: It wasn't clear.

THE COURT: Through the conversation about

Uttal. Go ahead.

A And I don't recall having any conversations with Levy from some time during the second week in December until I saw Levy down in Florida.

Q Could we go back a little bit, please, before you get to that? What were you primarily involved in during this period of time in December?

A Well, in December meetings were scheduled for December the 16th, I believe, or 15th or 16th, for the finalization and the signing of the Beatles' settlement papers, and we were all meeting at the Plaza Hotel.

Q Here in New York City?

A Here in New York City. The advisors to the respective Beatles, former Beatles, their lawyers, lawyers for the Apple operation in the United States and in England, accountants were all going to be -- and I had come in from California where I was residing to attend to those meetings and those meetings took place during the week of the 16th. I am not sure exactly what date I came in from California. I know it was before the weekend because I remember going up to Mr. Dolgenos' house on the Sunday before the meetings.

Q Now, do you recall having a conversation with anybody from Capitol around this time?

A I had gotten a telephone call in California from Ruppert Perry, who I believe was involved in the A and R activities or marking activities, or he was the EMI liaison with Capitol in the United States. and I didn't return his call because I think he called me in California, my office in California called me and told me that he had called --

THE COURT: You heard, had word of this while you were in New York?

THE WITNESS: In New York, that is correct.

MR. PRETTYMAN: Can we say where this was?

THE WITNESS: I had gotten the message, I believe, during the week of the B-atles' meetings.

Q Which was --

A The week of tne 16th. If the 16th is a Monday -- whatever that Monday was in '74. And I called Perry, I don't recall the exact date, but I remember the message was from my office was that he was leaving town by a certain date, I don't know the exact date, and I should get in touch with him before he left town. And I called Perry and he said that he will be asked by Len Wood to talk to me because if it was in relation to the marketing of John's next album I should speak to him. And I said to Perry that I was involved at the present time,

I couldn't discuss it with him on the telephone because I was involved with the settlement negotiations, finalization, and that I would get in touch with him after, or we would be in touch with others after I had gotten back to California which I thought would be the end of the month, by the end of the month.

Q Can you tell us, just give us an estimate of how long these Beatles' settlement negotiations had been going on leading up to these meetings in December of 1974?

A I think ever since the termination from Klein. I remember there were some meetings in London in July of 1973 and meetings in October of '73 and they just -- they were over almost a year and a half, two-year period.

Q Did you tell Mr. Levy about this telephone conversation you had with Mr. Perry?

A No, I didn't because I wasn't in communication with him, with Levy until I had seen him down in Florida.

Q All right. Now when did you next see Mr. Levy?

A I saw him down in Florida. I had gone down to Florida to see Mr. Lennon.

Q Do you recall when you went to Florida?

A It was the day after Christmas. It was a Thursday, I think it was the 26th of December.

Q And where in Florida did you go?

A Orlando. I think it is Orlando. Wherever Disney World -- the Florida Disney operation.

Q Why did you go to Orlando?

A Bhe Beatle papers were scheduled for signature, I think on the -- some time in -- for that week, I think on the 18th or thereabouts and I think it was the 18th, and John said that he didn't want to sign the papers. They were all ready for signature and John said he didn't want to sign the papers, he wanted to think about the papers. And so the papers weren't signed.

Q Did the other Beatles arrive in New York for the signing?

A Paul McCartney was in town, George Harris was in town and Ringo was in, I believe in London.

Q Okay, so you went to Florida , to Orlando?

A To Orlando.

Q What was the purpose of going to Florida?

A To review the papers, the settlement papers with John. A set of settlement papers had been given to John. He had gone down to Florida with Julian, I believe on Sunday.

Q Who else went with Mr. Lennon?

A I believe May Pang went with Mr. Lennon. And he had flown down to Florida and we had sent down to

Florida because we didn't have a set of papers ready, I believe we dispatched it down, that is my recollection, we dispatched a set of papers down, a set of the settlement papers for John to review by himself down to Florida. And it was agreed that I would come down to Florida and meet with him to answer any questions he might have.

Q When did you arrive in Orlando?

A I arrived in Orlando on Thursday afternoon. Thursday afternoon on the 26th.

Q Did you see Mr. Lennon that night?

A I saw him that night for dinner. He was staying at a different hotel. I stayed at the Dutch Inn.

Q Where was he staying?

A He was staying in Disney World or Disney Land in Orlando. I think he was staying at the Tiki Polynesian Village in the Disney World or Disney Land and he was staying there and I was staying at a hotel which was outside the Disney complex.

Q Did you see Mr. Levy and Mr. Lennon on that evening?

A Yes, I -- thaty shared adjoining rooms, I seem to recall. Or he -- I remember when I walked in and Levy wasn't there when I walked in, he was in the other room, and had been sleeping because I remember, and he had walked

in after I had been with Mr. Lennon for a period of time. I seem to remember one of the kids -- somebody had one of those rubber masks that you put on your head, funny face and Mr. Levy came in, he had just gotten up and we exchanged pleasantries and we went out to eat.

Q Did you talk any business with Mr. Levy that night?

A No.

Q Did you spend some time with Mr. Lennon reviewing these Beatles contracts that you had sent down?

A I came down on Thursday afternoon, Thursday night we went out for dinner, we were joined by a friend of May Pang's who lives in Florida, in Orlando.

We had dinner, we then walked around the Sidney World complex. By the time we finished up Lennon was tired, the kids were tired, and I went back to my hotel; this friend of May Pang's drove me back to my hotel.

I am sorry I then met with Mr. Lennon the following day, I met -- I met them for lunch in one of the restaurants.

I seem to recall it's some modernistic building, and I met him for lunch and after lunch MR. Lennon and I, I believe we cabbed back because I had come by cab, we cabbed back to my place at the Dutch Inn, and we sat in my hotel room and we reviewed Mr. -- Mr. Lennon began to ask me certain questions about the agreements and I answered, responded to those questions --

Q This was Friday the 27th?

A That's correct.

Q Now, how long did you spend with Mr. Lennon reviewing these agreements?

A I know we started after lunch so I have to

assume some place after 2 o'clock of thereabouts, because I may have met them about 12 o'clock.

Q Did you review them, the agreements, with him right through the night?

A No, no, because about 5 o'clock or so, somewheres in that area because I know it was still light outside, Mr. Levy and May Pang, Mr. Levy's son, Adam, and Julian came by to pick us up, to pick Mr. Lennon and myself up.

And we drove back to West Palm Beach and we arrived in West Palm Beach that evening. I then went with Mr. Lennon and Julian and May Pang to the apartment that they were occupying and we sat down and we chatted and we discussed maybe for a half an hour or so, not a very long period of time, whatever questions he had with respect to the settlement papers. My recollection is that we had dinner, or we had some food in the apartment itself. We didn't go out for dinner.

Q Did you have dinner with Mr. Levy that night?

A No, I don't believe --

Q Did you see Mr. Levy that night?

A No, I don't recall seeing Mr. Levy until the next morning.

Q Now, did you review these papers, the Beatles'

settlement papers with Mr. Lennon the next day?

A On Saturday?

Q Yes.

A No, I did not.

Q When did you see Mr. Levy the next day?

A I remember getting up early and I remember that I had strolled along the beach, I came back and they were all sitting by the cabana and the cabana as you walk through the back door of this particular hotel, and there was a cabana somewheres on the right and I saw Lou Garlick and --

Q When had you planned to leave Palm Beach?

A I was scheduled to leave about noon time.

Q Did you have a conversation with Mr. Levy?

A I spoke with Mr. Levy shortly before I left. We had sat around the cabana, we were just chatting about different things, and Mr. Levy called me aside and he said, have I spoken to Lyn Wood? And I --

Q Where did he call you aside?

A Well, he says I would like to speak to you. And I said fine and we walked over to the side of the pool. And he asked me if I had spoken to Lyn Wood and I said, No, I -- I am not sure if I mentioned my telephone call with respect to Rupert Perry, but I expressed -- I remember expressing to Mr. -- or I said to Mr. Levy, I am getting very pessimistic,

very, very pessimistic that EMI would consent to any form of arrangement, because the oldies seem to be coming back,or seem to be still happening. And I remember I think I cited the Carpenters had a record out called Please, Mr. Postman.

Q Who are the Carpenters?

A The Carpenters are a brother and sister singing team, and they sang an old -- one of the old songs, Please, Mr. Postman, a very famous song. So I expressed to him my pessimism.

Q What else was said?

A I think Mr. Levy may have said to me, gee, I hope EMI consents because I don't want to sue John Lennon.

Q And what did you say in response to that?

A I gave no response to that.

Q Was anything further said about what would happen next?

A I said I was going back to New York and I would be in touch with the EMI people.

Q Did you say anything about talking to anybody from Capitol?

A Well I -- I don't -- I am not sure, Mr. Bergen. I am not sure. I don't recollect any specific words.

Q You say you left Palm Beach at approximately Noon?

A Yes. I had a noon plane. I think I had a 1 o'clock plane, I am sorry. I left about noon time.

Q Where did you go from Palm Beach?

A I went back to New York, it was a Saturday night, I arrived Saturday night or late Saturday afternoon. I went back to my apartment in New York and I had scheduled with Mr. Lennon while I was down in Florida, he was coming back from Florida, because one of the things that I told Mr. Lennon, that we had discussed, that I had discussed with him, is the fact that Mr. Nicholas Baker, one of the Apple lawyers from England, was coming to New York. In fact may very well have been in New York for the purposes of witnessing Mr. Lennon's signature to the documents. And --

Q Had the other Beatles already signed the agreements?

A What happened was that McCartney signed a set of papers and Harrison signed a set of papers in New York and a set of papers were signed by Mr. Ringo Starr in England, and I think Harrison and McCartney signed the same set of papers.

The papers were then -- and Lennon didn't sign, the papers were brought to England. Stookey signed the papers, Baker came back and Baker brought the papers over to John's apartment on the -- I met Baker at the Plaza Hotel on Sunday

the 29th, he was scheduled to go back on the 30th, we met John late that evening at John's studio and John signed the papers. I remember he took a pole -- took polaroid pictures or had polaroid pictures taken of him signing the papers.

Q Was there any provision in the Beatles' settlement agreement covering the licensing of these non-Beatles' masters to Big Seven?

A Yes, there was. There was a specific resolution covering the licensing of certain non-Beatle-Apple masters. We had had primarily to that resolution we had -- I remember having telephone conversations with Neal Aspinol and Nicholas Baker. Neal Aspinol was an Apple employee in England, and I had indicated to the Apple people the various Apple non-Beatle masters which I thought might be good for a TV -- for use in a TV package. I remember that I had included as part of that schedule Billy Preston masters and there was some objection from George Harrison's representatives to the inclusion of any Billy Preston masters.

And so they were deleted. And then --

Q Mr. Seider, I show you a document that has been-- that is now being marked -- as Defendants' Exhibit CE for identification and I ask you if you have ever seen that. (Handing).

MR. BERGEN: I am sorry, I don't have another

copy to give to the plaintiffs, your Honor. I will let them look at it right away.

A This looks like an abstract of certain resolutions, there were a series of resolutions of Apple Corps, Limited.

Q Is Exhibit CE marked for identification -- CE, I am sorry, marked for identification -- CE, is that the resolution covering the licensing of these non-Beatle masters?

A That's correct. That gave the authority to Mr. Lennon to license the masters, certain of the non-Beatle masters. Although the settlement agreement only had provision for three masters and didn't indicate which three masters other than to exclude certain masters, the John and Yoko masters or Paul and Linda McCartney masters.

I had felt that the masters which I had selected which were more than three, as available for licensing, had all been songs by groups that were well-known or had had significant hits.

MR. BERGEN: Your Honor, maybe I should substitute this for CE because the plaintiffs have already been given a copy of this. This is --

THE COURT: All right.

Q Mr. Seider, I hand you Defendants' Exhibit CE

marked for identification and ask you if you can identify that document (handing).

A Well it looks like the Apple Corps Limited resolution. There were a series of various resolutions that they entered into, and this looks like an abstract, again, because there were more paragraphs than this.

MR. BERGEN: I offer this in evidence, your Honor.

MR. SCHURTMAN: Is this part of the settlement agreement?

MR. BERGEN: Yes, it is.

MR. SCHURTMAN: Could we have the whole agreement in evidence then?

MR. BERGEN: No. I object to that for the same reasons that we stated yesterday. It has nothing to do with this, what we are talking about here --

THE COURT: I assume it has to do with a lot of things --

MR. SCHURTMAN: But the Beatles' settlement agreement was previously identified by Mr. Graham. In fact I think we had it marked for identification. This apparently is a resolution which is part of the agreement. I am not asking for the other resolutions.

MR. BERGEN: No, what was marked with Mr. Graham

was, I think, as was described by him was kind of a top layer of a very inch and a half document. I believe Defendants' Exhibit CE marked for identification is one of the resolutions that was part of the underpinning of that document that Mr. Graham identified.

MR. SCHURTMAN: All I am saying is if you are going to offer the resolution, and I am not asking for any other resolutions, at least offer the underlying agreement that goes with it.

THE COURT: The thing that was identified by Mr. Graham.

MR. SCHURTMAN: That's right.

THE COURT: Was that offered? I don't recall.

MR. BERGEN: No, it wasn't.

THE COURT: Do you have any objection to having that go in?

MR. GRUMBACH: It came up as I recall, when Mr. Schurtman cross examined it.

THE COURT: Well, we will take care of that. In other words, I will receive CE and then we will find the other document and receive it.

xx (Defendants' Exhibit CE received in evidence.)

THE COURT: Are you at a convenient stopping point, Mr. Bergen?

MR. BERGEN: Yes.

THE COURT: All right. We will recess until 2:15 and then we will go until 3:30, as we said.

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

MR. PRETTYMAN: Your Honor, you may have the only copy of C-2.

THE COURT: Yes. I will give these back to you.

MR. PRETTYMAN: We need to make copies.

THE COURT: All right. What I would appreciate is just having two sets, if you could get a Xerox of the original exhibits, of these contracts, and my law clerk could have one and I could have one.

MR. PRETTYMAN: We have them.

THE COURT: You have that?

MR. PRETTYMAN: I think so.

THE COURT: All right. Then I will give you the originals back.

xx HAROLD SEIDER, resumed.

xxx DIRECT EXAMINATION

CONTINUED BY MR. BERGEN:

Q Mr. Seider, when we left off before lunch, you had just finished talking about the resolution in the Beatles' settlement agreement.

Did you discuss that resolution and the second part of the Core Together settlement with Mr. Dolgenos?

A Yes, I did.

Q When was that?

A The papers were signed -- the Beatle settlement papers were signed late Sunday evening and I met with Mr. Dolgenos --

THE COURT: That was the 29th?

THE WITNESS: The 29th of December.

A -- and I met with Mr. Dolgenos the next day, the Monday or Tuesday following that, or maybe both days, you know, because when I came to New York on Mr. Lennon's business I would use the Marshall, Bratter office.

Q Can you tell us what took place in that discussion?

THE COURT: Before we get to that, I wonder if you could give me -- is there any way you can just give me a sentence or two as to what the net effect of this Beattle settlement was?

In other words, I don't need to know a lot of detail.

THE WITNESS: I believe I can, your Honor.

THE COURT: Okay.

THE WITNESS: Basically the Beattles were a partnership of which 80 percent was owned by a corporation called Apple Corps, Limited, which was owned by the four individuals, and the remaining 20 percent was owned by the

four individuals, 5 percent each and basically the Beatle settlement involved the dissolution of that partnership and the resolution of the ownership of individual Beatle recordings as opposed to group recordings.

When I say individual, for example, a John Lennon recording or a Paul McCartney recording, and there was a dispute going on as to whether or not the individual's recording was owned by that partnership, and as a result of that settlement the individuals recordings were agreed that they were not part of the partnership assets, so that in effect the individual Beatles would have control over their individual recordings and that the only recordings, as to which the partnership had any proprietary interest, would be the Beatle group recordings.

THE COURT: While the partnership was in effect they could make individual recordings, right?

THE WITNESS: That's correct.

THE COURT: But there was a dispute as to who owned those individual recordings?

THE WITNESS: That's correct. When I say who owned, who owned the promotion, because those recordings -- there was no dispute that EMI owned those recordings.

THE COURT: I understand.

THE WITNESS: But it's the ownership of the

monies.

THE COURT: Are you saying that as to any past--was this for the future or did it deal with things in the past?

THE WITNESS: Well, the settlement as a compromise, because there was a dispute as to whether or not the partnership owned the past and the present and the future, and the compromise was made that those recordings that were made as to the past, the monies received, would belong -- and had been paid into the partnership pending the resolution of the dispute, would belong to the partnership and that the future monies would belong to the individuals and the recordings themselves, and the right to receive any future monies would be administered and controlled by the individual who made that recording.

THE COURT: Okay.

Had they made any recordings together for some time or was that pretty much over with?

THE WITNESS: My recollection is that the last released record was the Let It Be album that was released I believe in May 1970, but that I understand had been recorded prior to that time, and I think that the last recording was done sometime in late 1968 or early 1969, and that was the last group recording, and from 1969 forward the Beatles

recorded -- were recording individually.

Mr. McCartney recorded individually and Mr. Lennon came out with some albums on an individual basis, I believe Mr. Harrison came out with an individual album, and Mr. Harrison -- and Mr. Stookey also.

THE COURT: All right. Go ahead, Mr. Bergen.

Q Can you tell us what the discussion was between you and Mr. Dolgenos?

A Well, I requested Mr. Dolgenos to send a letter to Big Seven offering the -- certain of the non-Beatle masters for licensing for a TV package now that the settlement gave the authority to John Lennon to make a deal with Morris Levy or Big Seven in compliance with the October 1973 infringement settlement agreement.

Q Mr. Seider, I show you Plaintiffs' Exhibit 30 and ask you if that's the letter that Mr. Dolgenos sent.

A I received a copy of this letter. I believe it is.

Q Up to this point in time, had you ever discussed with Mr. Levy some kind of a written agreement covering what was discussed on the night of October 8?

A No.

Q Do you know when you became aware that Mr. Lennon had given Mr. Levy a tape of the rock and roll album?

A I have a vague recollection that sometime -- either very late November or December, I forget which, or early December, sometime, John having mentioned or May Pang having mentioned that a 7-1/2 tape was given to Morris, and I seem to recall I said, "I am sorry you did that."

Q When was the next time you spoke to Mr. Levy?

A You are talking --

Q This is after December 31.

THE COURT: Can you just wait a minute. Let me get a note.

All right.

Go ahead, Mr. Bergen.

Q Do you recall when you spoke to Mr. Levy?

A I think I spoke with Mr. Levy -- it was after New Years. I had gotten back to California and he called me. I think it was the 6th, the 7th or 8th, somewheres around that time, because it was shortly after I had gotten back to California, and he said that he had gotten this letter from David Dolgenos and he asked me does this mean that I am not going to ask EMI for permission, and I said no.

I said I had requested David to send out the letter in order to comply with the settlement agreement and I didn't want to prejudice John's rights with regard to that agreement.

jhe 7 Seider - direct

Q And what did Mr. Levy say in response to that?

THE COURT: Just hold it. I would like to get a note.

Mr. Reporter, read the last part of the answer.

(Answer read.)

pm

Q What did Mr. Levy say in response to that?

A Mr. Levy said, "Well, then, I am going to have to accept your letter."

And I said to Morris, "Morris, you can do what you want. I don't want to get into this shit kicking contest with you. I am going to speak to EMI and we will see what happens."

Q Did Mr. Levy say anything else? Did he say what he was going to say in this letter?

A I think he may have said something to the effect that "We have an agreemen I am going to send you a letter saying we have an agreement."

I said -- that is what precipated my saying "I am not going to get into a shit kicking contest with you, because it is not true, we don't have an agreement."

THE COURT: What did you say? Did you say you would still call EMI?

THE WITNESS: Call EMI, yes.

Q Was anything further said in the conversation?

A I can't recall right now, Mr. Bergen.

Q Did you ultimately receive a letter from Mr. Levy?

A I received a copy of a letter that Mr. Levy had sent to Dave Dolgenos.

Q I show you a document that has been marked as Plaintiffs' Exhibit 31. Is that the letter?

A I received a copy of this letter. I think Mr. Levy's signature is on it.

Q Before you received a copy of the letter dated January 9,1975, did you discuss the subject of this letter with Mr. Dolgenos?

A Mr Dolgenos called me when he had gotten this letter.

THE COURT: The letter from Levy?

THE WITNESS: This letter was sent to Dolgenos. I was in California at the time, your Honor, and I received a copy of this letter on the 20th of January.

Q Will you tell us why you know it is the 20th of January?

A My secretary stamped it in. I have a copy of that letter.

THE COURT: You had received a call before?

THE WITNESS: I had received a call before I received the letter and Dolgenos had read the letter to me over the telephone, and I said, "Oh, that is the letter that Morris said he was going to send," or "That must be the letter that Morris said he was going to send," and I said to David, "I will take care of that."

Q Did you ever call Mr. Levy back about that letter?

A I spoke with Mr. Levy, and I said David had gotten the letter. I had not seen the letter, so I could not respond to it as such, because I spoke to Levy subsequent to my conversation with him. He told me he was going to send me the letter. I had received a call from Mr. Al Coury of Capitol and --

Q Do you recall when you received that call from Mr. Coury?

A Some time during that week after I had spoken to Levy, I believe. It was the first working week in the new year. I think it was the week of the 5th or the 6th. And Coury had called me asking me to meet me about John's Oldies Album, to meet me for lunch. I called Levy and told him that I was meeting Coury at the Brown Derby, where we had made an appointment for lunch.

And then I met with Coury for lunch. And then I spoke with Levy subsequent to the lunch.

Q Can you tell us as best you can recall about the lunch with Mr. Coury, telling us who said what?

A Well, I met with Coury and I narrated, related to him John's desire to market this album through the medium of television. And then I went into the

reasons for John's feeling about that, and I told him about my meeting with Morris earlier or some time in October. And Coury said that --

Q Excuse me. Did you also review the 1973 settlement?

A With Coury?

Q Yes.

A In telling Coury about the meeting with Morris and that John and I had talked to Morros about the possibility of marketing this on television and that Morris had evidenced an interest in doing it, I narrated how that whole October meeting had developed, and I said to him, it will be a very good idea because it may be a way of resolving this dispute.

THE COURT: You said to whom?

THE WITNESS: This is to Al Coury. Coury said that he was not enthusiastic about merchandising or marketing an artist of John's caliber on television and he asked for a copy of the tape be sent to him.

Q A copy of the tape of the album?

A Yes, or whatever they had so he could listen to it. I am not sure he had heard it before or all the facts had been laid down.

Q Was anything else said?

A He said that he would talk to Bhasker Menon and the people at Capitol after they had heard the tape and we would arrange a meeting with Bhasker, Bhasker Menon.

THE COURT: How do you spell that?

THE WITNESS: B-h-a-s-k-e-r M-e-n-o-n.

Q Who is Bhasker Menon?

A He is the president and chief executive officer I believe, of Capitol Industries, which is the parent company of Capitol Records.

Q What is Mr. Coury's title at Capitol?

A He is the senior vice president, I think, in charge of Artists Relations or R and A, promotion.

Q Did you talk to Mr. Levy after this meeting with Mr. Coury?

A I called Levy up, I think, the following Monday, and I told him what had taken place.

THE COURT: Can you remember, instead of saying "told him," what took place, just going through the whole conversation as best you can?

A I told Levy that I had met with Coury and I explained the situation to Coury, and Coury was trying to arrange a meeting with Bhasker Menon, and I told him that Coury had asked for a copy of the tape, and Morris said something like, "Oh, oh, that is bad."

Q Was anything else said?

A I just don't recall at the present moment, Mr. Bergen.

Q Was the tape sent to Mr. Coury?

A I called May Pang and asked her to arrange to have a tape sent to Capitol as quickly as possible so they could hear it.

Q Can you recall what happened next?

Q I think it was the following Monday because it was -- it was the following Monday -- then I told Levy about the Coury meeting. I had a meeting with Bhasker Menon on the 14th, the next day, which was Tuesday, I believe, the 14th, and I think I had the meeting. The meeting began about 5 o'clock in the afternoon. This is in 1975, your Honor.

Q How did that meeting come to be set up?

A Well, when I left Coury he said that he would get back to Bhasker and relate to Bhasker what our conversation at the Brown Derby was. And then I got a call and -- I am trying to recall -- I got a call either that Monday or Tuesday, but I am not sure.

Q Tuesday of that week?

A Yes, of that week, and I think it may have been from Mr. Menon's secretary, arranging to see if I will be

available in the afternoon for a meeting with Mr. Menon.

Q Now, did you have this meeting with Mr. Menon?

A Yes, I did.

Q Who was present?

A My recollection is that I was present, Mr. Menon was present. It was held upstairs in his office on the executive floor of the Capitol Tower. Mr. Coury was present and I believe Mr. Brown Meggs.

Q Who is Brown Meggs?

A I believe he is the executive vice president and the head of marketing at Capitol.

Q This meeting was at the Capitc headquarters in Los Angeles?

A That is correct.

Q Can you tell us, as best you can remember who said what and what took place at the meeting?

A Well, I don't know, it is possibly Mr. Menon said the Capitol people had listened to the Lennon tape, I believe they perhaps made an acetate of it, and they listened to it and they were all very enthused about it, they thought it had great commercial possibilities, and they wanted to come out with the album.

Bhasker said that it would be foolish to

put this kind of album having this kind of commercial possibilities out on television, it would antagonize the normal dealers who would not have an opportunity to sell a Lennon record.

Q Can you tell us what you mean by the normal dealers?

A Well, the people who normally purchase the records from Capitol distribution, their rack jobbers, or what we call the mama and papa stores and the one stops and the like, in effect, the people who comprise the significant segment of the business would not have had an opportunity to participate in the distribution of this, and, therefore, they would not have an opportunity for profit.

Q Was anything else said?

A I said, "Well, look, John is excited about this as a television thing. It is not up to me to make the decision. I don't think thatyou want to go counter to John's wishes. I dont' think youwould want to. It depends really upon John, so you better prepare a marketing program and merchandising program and convince Sam that this is something which should go out in the normal way as opposed to purely television."

And they said that they would. I asked them

if they wanted to put the album out in the normal way, when did they anticipate putting it out. And I think it was Bhasker who said that he thought perhaps some time in February or thereabouts.

And I said, "Well, why do you want to put it out so early? I personally think that there is a lot of life in the Walls and Bridges album. I don't think that it has gone far enough. I think there is a lot of mileage in it."

I personally thought it was an excellent album, and Bhasker and I had a discussion about that album, meaning the Walls and Bridges album.

THE COURT: When you talk about a lot of mileage, will you tell us what you mean?

A I thought that the sales on that had not peaked.

Q What was Mr. Menon's response to that?

A Well, he thought it was wrong, and I was not going to argue with Mr. Menon on that point.

Q Does Mr. Lennon have any control over when his albums still are put out?

A In a way he does, because it depends on when he delivers the albums and when he records. But if Capitol did not want to put out the album, I don't think

you could have forced them to put out the album.

Q Does Mr. Lennon have any control in the sense of contractual provisions as to when an album is released?

A I am not sure that he does. I don't want to get into an interpretation of the 1969 agreement.

Q Do you recall when you next spoke to Mr. Levy?

A I called Mr. Levy after this meeting and recounted to him, I told him about the meeting, I told him the conversation, and I told him that the Capitol people would be preparing and going to see John on a marketing and merchandising program. I recall Mr. Levy saying, "Would it help if I called Bhasker Menon?"

And I said "I doubt it. It really depends on whether John believes that this album could be merchandised and marketed in the normal way, and that would depend upon the Capitol program."

MR. SCHURTMAN: May we fix a date for that call, if possible?

THE WITNESS: I am sorry.

THE COURT: He said he met with Menon and so forth January 14th and he called him right after that.

MR. SCHURTMAN: The same day?

THE WITNESS: It was not the same day. I did not get back into the office until after 7 o'clock. So it was not the same day.

Q Was anything else said in this conversation with Mr. Levy?

THE COURT: I would like to have just the last part of the answer.

(Record read.)

THE COURT: Was that the end of your conversation with Mr. Levy?

THE WITNESS: Yes.

Q Do you recall what happened next?

A I had gotten a telephone call from Mr. Al Coury saying that they had the program prepared, the marketing program prepared, and they were planning to come to New York, would I be present, and I said yes, I would. I believe I called Mr. Levy or he called me, but I know I had a telephone conversation with him, and I told him that the Capitol people would be coming in on the 28th or thereabouts to meet with John.

Q Did that meeting take place with the Capitol people?

A Yes, it did.

Q On what day?

A It took place on the 28th of January, 1975.

Q Who was present?

A First, John, Mr. Coury, May Pang and myself went to dinner at Gallagher's.

Q Here in New York City?

A New York City. And then we went back to the Sherry Netherlands, where Mr. Coury was staying, and we waited for two associates of Mr. Coury's, Dennis Kileen and Roy Kohara, to come. They had the material for the proposed marketing campaign, merchandising campaign.

Q Going back to the Gallgher dinner, can you tell us what was said by each of the parties therewith respect to the Rock and Roll album?

A I believe --

THE COURT: Again, who was present at Gallagher's? Coury?

THE WITNESS: Coury, myself, Lennon and May Pang, and Coury said how enthused or excited he was about the album. He thought the album was terrific and wonderful or words to that effect.

Q Did Mr. Coury say anything else about the album?

A Well, he did indicate that he did not think that television would be a good marketing medium for this

and would antagonize the normal marketing, the normal distributing people that Capitol uses.

Q Did Mr. Lennon say anything in response to that?

A Well, again, John was very excited about television. He had talked about it, that it would be a first, a novelty, that it would by-pass the critics and get to the consumer, and talked about the kind of excitement that he thought television created.

Q What was Mr. Coury's response to this?

A Again, my recollection is that Coury didn't think that it could sell just as well -- he didn't think that television was the right medium or television should be used for artists of John's stature, that, again, it would antagonize the dealers.

Q Have you told us everything that you can recall about the Gallagher dinner with reference to this album?

A At the present moment I really can't recall. I am drawing a blank right now.

Q The four of you went back to the Sherry Netherlands?

A That is correct.

Q Did anybody join you there?

A I said that Dennis Kileen and Roy Kohara were there.

Q Both from Capitol?

A That is correct.

Q What took place in the Sherry Netherlands?

A Well, once we got past the preliminaries of exchanging hellos and things like that, the Capitol people --

THE COURT: Who was at the Sherry Netherlands? Coury, Kohara, Kileen --

THE WITNESS:And myself, May Pang and John Lennon.

THE COURT: Go ahead.

A I think I recall that there was a mock of one album of people, of bodies in different clothing with the face of John Lennon.

THE COURT: A mock-up?

THE WITNESS: It looked like an album cover of people in different clothing, but all the faces were John Lennon's face,and John had thought that that might be an interesting cover design. Then I think it was Roy Kohara, he showed John the mock-up of what Capitol was proposing as the record cover and they used a picture that John --

THE COURT: I am mixed up. You said there

was a mock-up of an album cover?

THE WITNESS: Yes, John had made a mock-up or somebody had made a mock-up -- it was not Capitol people -- I remember it being shown that evening, people dressed in various clothing.

THE COURT: The mock-up? Who showed people in different clothing?

THE WITNESS: I think John may have had that or Capitol had brought that with them. I just don't recall exactly how that came.

There was a cover that had been used on an Elvis Presly album cover. There was a design on a cover -- my recollection that there was a picture that John had or somebody, John had gotten a copy and had sent out to Capitol, to Tony King, a picture of himself in Hamburg, Germany, standing in the doorway wearing a black leather jacket, and the cover had neon lights on the back or something, and John liked the cover, he thought it was a great cover, it looked interesting, he liked the neon.

THE COURT: Then what was the discussion?

THE WITNESS: Well, I think there was some discussion with regard to a possible television ad that John had thought of, he had mentioned that, something called -- I believe we were using the word the wetlook, wet, w-e-t, look, of somebody combing their hair. John mentioned something about he had seen it on a commercial, something like that.

Then the different ideas of merchandising it, you could have -- oh, yes, in connection with the wetlook I think they were talking about giving out combs and various paraphernalia to sort of embellish on it, on this concept of a wetlook, that might be like the theme, the merchandising theme, like they had done previously on the Walls and Bridges album.

There was a kind a verbal thing saying "Listen to this record, listen to this matchbook, listen to this book," and things like that. So they were trying to get -- they were bandying about things dealing with the wetlook.

THE COURT: What is the wetlook?

THE WITNESS: I found out, your Honor, as a result of that discussion. The wetlook is -- I think when the guys used to comb their hair back with a lot of

grease on it and they hd -- not long shaggy hair, but it is -- I think the phrase was DA,meaning a duck's ass, and it had to do -- it was that type of thing.

Q Was that something that was related to the 1950s?

A Oh, yes. It was the whole late 1950s, very early '60s. The whole thing was the kind of adverts.

Oh, I think we even discussed about holding a dance party, like they used to hold the dance parties in the late '50s and the early '60s.

And they were going through all the campaigns. The whole idea sounded -- it would be a hell of a campaign, you could show commercials with people dancing, like Dick Clark has a show, and you give out the albums and inducements and the like.

If you are in the record business you know they sit around the table and they discuss merchandising idea and ideas bounce back and forth and the like.

Q Was there any discussion about T-shirts and billboards?

A Generally in John's albums there were, he always issued a T-shirt, and I am sure the discussion came up. I dont recall anything specific.

These things -- you know, as I talk, Mr. Bergen,

they come to mind, like, you know, the comb, the wetlook, the dance parties.

Q Do you recall anything about a billboard?

A Oh, I think we -- oh, yes, the neon light. We had discussed something about the neon light, a billboard with a neon light blinking rock and roll, or something like that.

Q Can you recall anything else that was discussed?

A Well, John apparently was persuaded because we agreed that evening that the album could come out in the normal -- through the normal channels and I remember after that decision was made I asked Mr. Coury if he would meet with me to go and see Morris Levy, if he would be willing to see Morris Levy the following day to explain to Mr. Levy why Capitol would not consent to releasing this record through television.

Q And what did Mr. Coury say?

A Coury indicated that he would come and I said I would get back to him to let him know the time.

Q Was there anything more said at this meeting about the photograph that was going to be used for the album?

A Yes. They were trying to get more photo-

graphs for the album and I remember we had a discussion about the photographer who had made the -- who had done that particular picture of John standing in the doorway.

Q Do you recall his name?

A Yes, Jurgens Volmer. And John or May, either one of them, mentioned the fact that they had bumped into him, that he was living -- I think he was living downtown or in Brooklyn someplace, and that he had a lot of other early Lennon pictures we were talking about using, perhaps having a booklet in the album, and they were going to get in touch with Vollmer.

First of all, they had to get in touch with Vollmer and work out the legal clearances, because this was -- Vollmer had given the picture to John or John had gotten the picture, but I don't -- I am not sure if we had at the time any legal clearances. I do remember that we did have some discussion at the time about getting Vollmer's approval. In fact, I think Killeen -- not Killen -- Kohara -- they called Vollmer that evening.

Q Right from the Sherry Netherland?

A I believe so. And I think they negotiated the price -- I don't recall the price-- it may have been like $500 -- for the use, and I think it was a one-time use, of that picture on the album cover.

Q By one time you mean just restricted to this album?

A Yes, to this album, or in connection with the merchandising of this album. But for example, Capitol would not own the picture to use in thinking that they wanted or John could use it in thinking that he wanted.

Q You mean Mr. Lennon could not use it in anything he wanted othr than this album?

A I believe so. I believe Capitol -- Mr. Bergen, Capitol incurs the expense, or EMI, or the record company, incurs the expense of Mr. Lennon's covers.

Q Do you recall anything else that happened at this meeting?

A I remember it broke up very late at night and I am not sure -- I don't believe so. I am not -- I don't recall at this time.

Q Do you recall when you next spoke to Mr. Levy?

A I called him the next day.

Q Do you recall when?

A Yes. Some time early in the morning. And I called Levy and I said "Morris, John" -- because I had told him -- I told him about Coury coming in, I said I would tell him what took place.

So I called him the next day and he said

"Morris, Coury met with John and John has agreed -- they presented a marketing program and John has agreed to put it out in the normal way."

I wanted to come over to meet with him and to -- to bring Coury over to Levy that day, the next day, the 29th, and --

Q You were talking to him on the morning of the 29th?

A I spoke to him on the morning of the 29th and I called him, let him know, and I told him I wanted to come over with Al Coury so that the representative of Capitol could explain why they would not consent to allowing this to be marketed in any other way than through Capi in the normal way and --

Q Did you set up a meeting for that day?

A I set up a meeting for later on in the day. Coury -- I got back to Coury --

Q Excuse me. Let us go back to the telephone call with Mr. Levy.

A Okay. Did Mr. Levy say anything in response to this?

A I don't believe he did, other than we set up a meeting for, I believe, 2 or 2:30.

Q You were about to say you called --

A I got in touch with Coury -- I don't know whether I spoke with him or I spoke with his secretary -- because Coury had said that he couldn't make a meeting in the morning because he had another appointment downtown, and so that's why I made the meeting with Levy in the afternoon, and I --

Q Do you recall what time the meeting was set for with Mr. Levy?

A As I said, I think around 2 or 2:30, because I was supposed to meet Coury -- I got in touch with I think it was Coury's secretary and told her to tell Al that the meeting is set for 2, 2:30, and I would meet him in Lennon's office, which was located in the same building.

THE COURT: Whose office?

THE WITNESS: Lennon has an office at-- Mr. Lennon.

THE COURT: Oh.

THE WITNESS: Lennon Music has an office at 1370 Avenue of the Americas and --

Q Is that the Capitol building?

A It is the Capitol-EMI building. Capitol has their offices also in that same building.

And that I would meet him, meet him, "him" being Mr. Coury, at about 1:30, 1 or 1:30 in Mr. Lennon's

office, and then go over -- and then from there go over to Levy's office.

I remember I got to the Lennon office. It was raining that day very, very heavy. 1:30 came. Coury wasn't there.

I called Coury's office. They hadn't heard from him. He was still downtown.

2 o'clock came. Well, Coury didn't show up.

I finally -- Coury finally called me. I had called Morris and said to Morris that Coury was late, he hadn't come, and then it must have been about 3 o'clock when I spoke with Coury and Coury said that he was still stuck downtown, he couldn't get a cab because of the rains and he has to make a 4 o'clock plane, and that was it, or he had to get to the airport by 4 o'clock to get back to California because he was going back to California that day.

I called Morris and said to Morris "It's obvious Coury is not coming. I apologize for having set the meeting," And I arranged to meet with Mr. Levy on the 30th to explain to him and to relate to him in fuller detail what had taken place on the 28th.

Q Did you meet with Mr. Levy the next day?

A I went to Mr. Levy's office the next day.

Q At what time?

A I think it was -- about 3 o'clock, I believe. I know it was in the afternoon.

Q Who was there when you got to Mr. Levy's office?

THE COURT: What time did you get there?

THE WITNESS: It must have been about 3 o'clock, your Honor.

Q Can you tell us what took place and who said what?

A Well, I was ushered into Mr. Levy's office by one of the girls and he was in the office by himself. He was on the telephone. I sat down.

Mr. Levy got off the phone. He was still talking on the phone at the time that I walked in and after Ihad sat down and he got off the phone and he looked at me and he smiled and he said -- I don't know the exact sequence, but he said "I'm coming out with the album. I've been had. You don't need the consent of EMI. The Beatles have filled all of their recording obligations."

And I told Morris that he was crazy, that it's sheer folly on his part, and that I had not lied to him about the necessity to obtain the consent of EMI.

Morris said, amid the profanity, that I had -- that he -- that I was lying, that he had a copy of the contract,

and I seem to remember that he got up from his desk, moved to the right, picked up something, a sheaf of papers, and waived it at me.

He says, "I got a copy of the contract."

And I said "Where did you get that from, Alan Klein?"

And he said no, he said he had gotten it -- he mentioned the EC or ECM tape case.

That particular case, your Honor, was -- may I?

That particular case was a tape piracy case that Apple and Capitol had brought against a tape pirate and I wasn't party to that agreement, to that lawsuit, I didn't know anything about it. I knew that there had been a piracy case brought.

THE COURT: I am familiar. I have one of those.

What did Mr. Levy say?

THE WITNESS: He said "My lawyers read the contract."

THE COURT: No. What did he say about the EC?

THE WITNESS: He said "No, I didn't get a copy from Alan Klein. I read the agreement, my lawyers have read the agreement, and you don't need the consent of EMI."

THE COURT: Did he say anything about the

EC tape?

THE WITNESS: No. I said "Where did you get a copy of the agreement? You must have gotten it from Alan Klein."

THE COURT: And what did he say?

THE WITNESS: He said no, he didn't, he got it from the EC case or the ECM tape case.

THE COURT: He got it from the ECM tape case, his lawyers had read it?

THE WITNESS: Yes, he said to me that his lawyers had read it and that John Lennon was the president of Apple and he didn't need the consent of anybody and he had the right as president of Apple to make the deal.

I remember at some point, and I think it may have been the very beginning, that I said to him "You've bought Alan Klein's bullshit."

Q What did Mr. Levy say in response to that?

A I think that's when he said no, he didn't, or he knows that there is an exception in the contract and he has read the contract, and then I said, "You got the contract from Alan Klein;" he said "No, I got it from the EC tape case or ECM tape case," et cetera.

This must have taken place in about ten or fifteen minutes or so and then --

Q Did Mr. Levy do anything with respect to a tape recorder, do you recall?

A Oh, yes. He played -- I remember he played You Can't Catch Me. He moved around, he turned around -- it is almost like fitting the irony -- he turned around and pressed a tape recorder and he played that.

Q Played You Can't Catch Me?

A Yes, I think it was You Can't Catch Me.

Q Who was singing?

A It sounded like John Lennon's voice.

Q After this took place what --

A Again, I don't know the exact sequence, but shortly in that -- in the events that I just described Mr. Bill Krasilovsky came in and --

Q This is Mr. Levy's lawyer?

A This was the lawyer that Mr. Levy had used in the infringement action.

And I said -- and I thought to myself, Morris didn't call Bill while I was there, so obviously Bill is there by prearrangement. So I got kind of nervous, what he hell is going on over here, and --

Q Did Mr. Krasilovsky say anything?

A In my own way I began to tune out. I started -- I remember because I was sitting in the chair and the

window was to my right and I started looking out the window, because I didn't want to involve myself in the conversation, because I knew we would be here at some point, and I -- I just remember Krasilovsky saying that the public will be served, because I kept saying to Morris earlier, I said "You're crazy." I said "You cant put out the album, you have no rights."

And I remember Morris saying "I'm going to put it out, I got a shot, I got a shot."

Why Krasilovsky was there, I remember he mentioned -- he mentioned something about the Sarah Vaughan case.

Q Who did?

A Mr. Levy.

Q Do you recall what he said about the Sarah Vaughan case?

A I really don't, Mr. Bergen, because I -- I must tell you, I was a bit stunned by the kind of attitude that was going on there.

Q Did Mr. --

A And the kind of environment that I was in.

Q Did Mr. Krasilovsky say anything other than the public will be served?

A I don't know. I just don't -- I just don't

recall. I kept remembering --

Q What happened next?

A Then lo and behold, Mr. Schurtman appeared, and I am saying hum, Mr. Schurtman appeared, and I said to myself again --

THE COURT: The next witness.

THE WITNESS: Yes.

A I said to myself again he didn't call anybody in my presence, and Mr. Schurtman introduced himself, he handed me a card, and at that moment I don't think I said very much after that.

Q Did Mr. Schurtman say anything?

A I don't recall, Mr. Bergen. As I said, I just -- I wasn't going to listen to anything that was going on because I didn't want to respond.

Q Did you say anything about seeking an injunction against Mr. Levy or his companies?

A I probably said it before Krasilovsky came, I am not sure if I said it after Krasilovsky came, because I was trying to tell Morris "Morris, it is crazy." I said "Look, you know, it is crazy. You know, Capitol I assume is going to protect its right, is going to go out and get an injunction."

Q Do you recall anything else about that meeting?

A Oh, Morris kept pushingme. He says, "Do you want to go call Capitol?"

Yes, I think this was while the lawyers were present.

I said "I am sure that if you are going to put out the album anything that Capitol is going to say is not going to stop you and I am sure that Capitol will find out in due course and I will call them in due course."

I got the feeling that he was trying to stampede me.

Q How did the meeting finally end?

A Well, I realized it was ridiculous to stay there any longer and I started out. The lawyers were still there.

I remember as I walked out of the office Morris shouted "Get me" -- "Do we have any photographs of John or get the photographer," and I remember as I was walking out i bumped into I believe an associate of Mr. Levy who was up at Mr. Levy's office.

Q Who was that?

A A fellow by the name of Nate Mc Calla.

Q Did you speak to Mr. Mc Calla?

A Yes, I did. And we basically -- my conversation with him related to -- did not relate to what had taken

place in Mr. Levy's office, it related to an act on the UA label.

Q What was the name of that act?

A A group by the name of War.

Q How long did you --

A Oh, God. Irony of ironies.

Q How long did you discuss this group with Mr. Mc Calla?

A I don't know, but I know that I deliberately -- I stayed talking to Nate because I didn't want Morris to think that I was going to be stampeded. He was going to do what he was going to do and I was going to do what I had to do and I wasn't going to run around like a chicken without his head.

Q What happened next? Did you finally leave the offices?

A Yes, I left the office and I -- I think I just got out of there and I walked around in a little bit of stunned amazement and I tried to in my mind recall everything that had transpired in this whole thing to see the bases upon which Mr. Levy might proceed and I then --

Q Did you speak to Mr. Lennon?

A I saw John -- I then went to John's apartment. It must have been about -- I gues it was about 6 o'clock,

between 6 and 7, I think. It was the studio. I went there, I remember I walked in, and I think John or May said to me "I understand Morris is coming out with the album," and I was surprised and I said to them "How do youknow," because I thought -- Morris had told me and that was the first that I ever heard that Morris was coming out with the album.

It was either May or John had said that they had received -- I think May said that she had received a telephone call from Morris saying that he was coming out with the album , no hard feelings, is there anything that John -- this is May telling me -- anything that John wanted to do about editing, changing the tapes, something aobut a courtesy to John because of his stature as an artist, and I think Maybe if -- maybe something about doing the commercial.

Q Do you recall anything that Mr. Lennon said to you?

A Other than the fact that he thought the whole -- he thought that this thing was kind of rubbish, I mean, it was kind of arrogance.

Q Do you recall anything he said?

A I am sorry. I don't recall John's exact words. I don't recall his exact words.

Q Do you recall discussing your meeting with Mr. Levy any more that night with Mr. Lennon?

A Well, I told John -- I believe I recounted to John and to May the fact that I had met with Morris and I had just found out and how shocked and amazed I was, and then we decided to call Capitol.

Q Did Mr. Lennon ask you whether Mr. Levy could do this?

A Oh, yes. Oh, yes.

Q And what was your response?

A I said "Look, John, in this country anybody can do anything they want, subject to taking the consequence of litigation."

Q You said you talked about calling Capitol.

A Yes.

Q Did somebody call Capitol?

A Yes. We called Capitol. I think we decided to call Coury and tell Coury what was happening.

I don't believe that Coury was in his office. I know -- I think we call Coury at his home, we called him at his office.

Q Do you know what the approximate time was that you called?

A It was after -- I think it was after 7 or

8 o'clock New York time.

Q Did you finally speak --

THE COURT: You say you couldn't reach him that evening?

THE WITNESS: No, we did reach him that evening, your Honor. We did speak with Coury. Initially we didn't reach him.

Q Could you just tell us what the conversation was with Mr. Coury?

A Well, I told Coury that Levy was coming out with the album and he said that he knew and I said "How do you know" and he said -- he said that Alan Klein had called Bhasker Mennon that day to tell Bhasker that Levy was coming out with the album.

Q This is January 30th?

A That is correct.

Q The same day as you are meeting with Mr. Levy?

A It was a Thursday.

Q Did you say anything to Mr. Coury about this information he told you about Mr. Klein?

A I was surprised that I had only recently, just hours earlier, found out from Levy that he was coming out with the album, how the hell did the people on the West Coast know about this before I even knew about this?

I think I was saying "How the hell did you find out?"

Q Did you ask Mr. Coury?

A And he said that Klein had called Mennon and told Mennon that Levy was coming out with this album.

Q Did Mr. Coury say when Mr. Klein had made this call to Mr. Mennon?

MR. SCHURTMAN: I think that last answer was triple hearsay.

THE COURT: Are you commenting or objecting?

MR. SCHURTMAN: I will withdraw the objection I didn't make.

THE COURT: I think really the purpose of this is to get the sequence of events. I guess this leads up to something.

Okay. Go ahead, Mr. Bergen.

Q Mr. Seider, how did the conversation with Mr. Coury end?

A Well, I didn't pursue, you know, the time that Klein called. I just thought it was odd. I was a bit disturbed by it.

Remember that -- I told Coury what had taken place at Levy's office and that Levy had played the tape and Court wanted to know how Levy got a hold of the tape and I said that apparently John had given Levy a 7-1/2 inch

tape for listening purposes and that's what Levy was using to put out the record.

Q Did you have any other conversations with the people from Capitol either that night or the next day?

A I spoke --that same evening I remember speaking with Chuck -- Charles Tillinghast. Mr. Tillinghast is I think director of law or a vice president-law --

THE COURT: You called Mr. Tillinghast?

THE WITNESS: He called me or I called him. I know that we spoke at John's studio.

THE COURT: All right.

Q At some point did you and Mr. Tillinghast discuss Mr. Lennon sending a telegram to Capitol?

A Yes.

Q When did that conversation take place?

A I think the next day. Iam not sure if it was that day. I think it was the next day.

Q What was the purpose of this telegram?

THE COURT: A telegram to whom?

MR. BERGEN: To Capitol from Mr. Lennon.

THE COURT: Okay.

A May I see the telegram?

Q Yes. Mr. Seider, I show you a document that has been marked Defendants' Exhibit YYY for identification

and ask you if that is the telegram you are referring to.

A Yes.

Q Did you and Mr. Tillinghast discuss that telegram before it was sent?

A Chuck asked me to send a telegram along these lines and I composed one, I check it with him, and then I confirmed with John the right to send it out, and I believe I sent it out on the 31st. I called it into Western Union.

THE COURT: We agreed to recess at 3:30.

MR. BERGEN: May I just offer this telegram in evidence, your Honor?

THE COURT: Right. I am not in any hurry, but if the lawyers are I am perfectly willing to let you go. It isup to you.

MR. BERGEN: I offer this in evidence, Defendants' Exhibit YYY.

MR. SCHURTMAN: No objection.

THE COURT: Allright.

(Defendants' Exhibit YYY was received in evidence.)

MR. BERGEN: I think this is probably a good place to stop if we are going to stop around now, your Honor.

THE COURT: All right. 10 o'clock Monday.

MR. SCHURTMAN: Will we be going all of next week?

THE COURT:Yes, we will.

MR. SCHURTMAN: Your Honor, we may be calling Alan Klein as a witness and I believe he can make it on Tuesday. Could we arrange to have him testify on Tuesday?

THE COURT: Oh, sure.

MR. PRETTYMAN: Tuesday is the day that Mr. Lennon is going to be here from Los Angeles.

MR. SCHURTMAN: It might be a good idea to have both of them. They negotiated -- oh, no. That was Wood. I am sorry.

THE COURT: We will work that out. Counsel ought to get together and talk about the schedule because it is immaterial to me.

What about Mr. Kahl, what is his situation?

MR. SCHURTMAN: Mr. Kahl is still in Florida. I understand that the surgery will take place early next week and we hope to get him back.

THE COURT: Whose surgery is involved?

MR. SCHURTMAN: This is the surgery of the father-in-law and -- I will check this weekend, your Honor, and find out where we stand.

THE COURT: I do think that it is important to

you to get him here.

MR. SCHURTMAN: It is terribly important.

THE COURT: It would be very helpful to the case. If he can somehow, even despite those problems in his family, conduct his business here, I think we would all appreciate it.

MR.SCHURTMAN: Your Honor, the last time I spoke to him the man was utterly distraught. But I will try to bring him in next week.

THE COURT: All right. You keep in touch with him and do the best you can.

(Adjourned to Monday, January 26, 1976, at 10 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Frankie Crocker	1117	1154		
Howard Seider (Resumed)	1176			

EXHIBIT INDEX

Defendants	Identification	In Evidence
CE		1235

BIG SEVEN MUSIC CORPORATION,

vs. 75 Civ. 1116

JOHN LENNON, et al.

January 26, 1975
10 A. M.

(Trial resumed.)

H A R O L D S E I D E R, resumes.

MR. SCHURTMAN: Your Honor, I have one preliminary application to make. In reading the transcript of the trial over the weekend, I was struck by the fact that everyone, including the court and myself, on occasion has lasped into the habit of referring to Mr. Levy and his companies interchangeably. People would speak of the deal made with Mr. Levy and so on. Now, I have not objected, because there is no question that Mr. Levy controls the two companies and that he was the primary spokesman for the two companies. On the other hand, there is a legal issue in this case. Certain counterclaims have been asserted against Mr. Levy as an individual, in addition to counterclaims against this companies. We have asserted if Mr. Levy at all times acted as an agent of a fully disclosed principal and that he is not personally liable for anything. Now, I don't want the fact that people

have lapsed into a colloquial habit of interchanging Mr. Levy and his companies to prejudice us on that issue. I would like to have the right of a continuing objection when that is done or, at least, clarify the point to your Honor at this point.

MR. PRETTYMAN: Does your Honor want a statement on that? First of all, I think that any objection that might have been had has been waived by Mr. Schurtman's own use of the words interchangeably, and by the use of those words interchangeably by witnesses. But, secondly, I think the testimony has shown and will continue to show that everyone has treated Mr. Levy interchangeably with his companies. That is precisely one of the issues.

THE COURT: I think this, Mr. Schurtman, that the record has to stand for what it stands for, and if it is significant as to whether people thought they were dealing with Mr. Levy or his corporations, then the testimony in the case will have to be introduced as to how it cuts on that point. Now, you are perfectly free on cross of any witness or you are perfectly free in questioning your own witness, certainly, to ask them as precisely as you wish who they thought they were dealing with and so forth. But I think that is the way you will have to handle it.

MR. PRETTYMAN: May we have one other preliminary

matter, your Honor? I notice that Mr. Cahl is here and I understand that he does have these illnesses in the family. If there is any possibility that he would have to leave after a short period, may I just suggest that it might be more expeditious to put him on direct and cross. Now, I certainly don't want to try the plaintiff's case for them, but I want to point out that if he suddenly is called away again, he will not be here.

THE COURT: I am sure Mr. Schurtman will call him soon. I have a feeling that Mr. Seider's testimony is close to be finished. Let us finish with Mr. Seider.

CROSS-EXAMINATION CONTINUED

BY MR. BERGEN:

Q Mr. Seider, when we left off on Friday I think we had just finished introducing into evidence the January 31 telegram that Mr. Lennon sent to Capitol Records. Do you recall that?

A Yes, I do.

Q Now, was that telegram sent as a result of discussions that you had with people from Capitol?

A I had spoken to Mr. Tillinghast with respect to that telegram.

Q Will you tell us what you and Tillinghast discussed?

mmcg Seider-cross

A May I see the telegram, Mr. Bergen?

(Pause.)

am

Q Mr. Weider, I show you Defendants' Exhibit YYY.

A Well, we discussed the wroding of this particular telegram.

Q Prior to sending the telegram did you have a conversation with Mr. Coury on the telephone?

A I had a conversation with Mr. Coury, I believe, on the 30th at Mr. Lennon's apartment -- studio.

Q Did Mr. Coury tell you during the course of that telephone conversation how Capitol had learned that Mr. Levy was going to put out the album?

A Well, he informed me that they had learned through Alan Klein, who had called Bhasker Menon, that Mr. Levy was coming out with the album.

Q Did Mr. Coury say when Mr. Klein had spoken to Mr. Menon?

A He said earlier in the day, because I believe I did ask him when he had learned about it because I -- I was disturbed that I had only learned about this somewhere between three and four o'clock that afternoon, and I hadn't spoken to any people at Capitol prior to that time or subsequent to -- or prior to being in Mr. Lennon's apartment.

MR. BERGEN: Your Honor, may I just have a moment?

THE COURT: Sure.

(Pause.)

Q Mr. Seider, I show you Defendants' Exhibit CCCC and ask you if you have ever seen that telegram or a copy of it.

I think they are all the same telegram.

A Yes, I have.

Q Prior to that telegram being sent did you discuss the sending of it with Mr. Lennon?

A I am not sure if I discussed that particular telegram with Mr. Lennon.

Q Do you know whether--

THE COURT: Who is that from and to and so forth?

MR. BERGEN: That is the one, your Honor, from Mr. Lennon to Mr. Levy.

THE COURT: Is that in evidence?

MR. BERGEN: Yes, it is.

THE COURT: All right.

Q Do you recall whether either you or Mr. Lennon ever got a response from Mr. Levy to his telegram?

MR. SCHURTMAN: Mr. Bergen, which telegram did you say was in evidence?

MR. BERGEN: Both of them are.

MR. SCHURTMAN: May I see them?

MR. BERGEN: Sure.

MR. SCHURTMAN: Our list doesn't show them as in evident.

(Pause.)

MR. BERGEN: Would you read back the question to him, please.

(Question read.)

A I received a telegram from Mr. Levy.

Q Mr. Seider, I show you a document that has been marked as Defendants' Exhibit DDDD for identification and ask you if that is the telegram.

A I received -- on the second part, the second telegram, Mr. Bergen.

Q You mean page 2?

A Page 2.

Q Of DDDD.

A DDDD, and that was sent to me, and I think I believe I may have gotten a copy of this also in California, and I believe that I got the top page of DDDD and that may have been sent to me by one of Mr. Lennon's employees.

THE COURT: I wonder if I could see YYY, CCCC and DDDD.

DDDD isn't in yet?

MR. BERGEN: No. I offer it now,your Honor.

THE COURT: All right. Any objection?

MR.SCHURTMAN: No objection.

THE COURT: All right. Received.

(Defendants' Exhibit DDDD was received in evidence.)

Q Did you respond to --

THE COURT: Just a moment, please.

MR. BERGEN: I am sorry.

THE COURT: All right, Mr. Bergen. Go ahead.

Q Mr. Seider, did you respond to Mr. Levy's telegram, DDDD?

A Yes, I did.

Q I show you a document that has been marked Defendants' EEEE and ask you if that is that telegram.

A Yes, it is.

MR. BERGEN: I offer EEEE into evidence, your Honor.

MR.SCHURTMAN: No objection.

THE COURT: All right. Received.

(Defendants' Exhibit EEEE was received in evidence.)

Q Mr. Seider, did you ever receive any response

to the telegram that is Exhibit EEEE in evidence?

A I don't believe I did.

Q Did you or Mr. Lennon on October 8th tell Mr. Levy that Mr. Lennon had breached the Come Together settlement?

A No.

Q Was Adam VIII ever mentioned during the course of the October 8th meeting?

A I don't -- I have no recollection of Adam VIII being mentioned.

Q Was there any discussion on October 8th of any maximum duration on the promotion and sale of the album?

A No.

Q Did anyone on October 8th say that the production and distribution of the Lennon album would be done as quickly as possible?

A I don't recall that -- those words.

Q Was there any discussion on October 8th that any television mail order promotion would be exclusive of normal distribution?

A No.

Q Did Mr. Levy during the course of the October 8th meeting or at any other time say that his company would

have to have such an exclusive?

A I just don't recall conversations about exclusivity because the conversations never got very far.

Q Was Mr. Spector's royalty arrangement with Mr. Lennon and EMI ever mentioned at the October 8th meeting?

A No.

Q Did either you or Mr. Lennon during the course of the October 8th meeting state that Lennon would take care of Capitol or EMI from some royalty that Lennon would receive from Mr. Levy?

A No.

Q On October 8th did you discuss the selling price for any album?

A Other than the fact that Levy had indicated that single albums sold generally for about $4.98.

Q During the time of the 1969 negotiations leading up to the EMI-Apple, Apple-Capitol agreement, and I am talking specifically about the Apple-Capitol agreement, was there any such thing at that time as TV mail orders?

A I don't recall TV mail orders.

Q Did that term or concept, TV mail orders, ever arise during the negotiations leading up to the Apple-Capitol 1969 agreement?

A I have no recollection.

MR. BERGEN: I have no further questions.

THE COURT: I thought you were going to get into this. There was another topic which I would be interested in covering and that is the recording of the John Lennon Rock and Roll and the deletion of Angel Baby. You recall Mr. Lenn said he spoke to Mr. Seider and got his consent to delete that number.

MR. BERGEN: I can ask him that, your Honor.

THE COURT: Okay.

Q Mr. Seider, do you recall any conversation with Mr. Lennon at the time that Mr. Lennon was finally mixing the album and doing the lacquer masters with respect to what songs would be on the album?

A I reall that I was down at Record Plant and John was EQing or was working in the cutting room making the master lacquer and I think they were working on Angel Baby or Be My Baby and some other tunes and we then went out to eat.

I recall that we went to Downey's around the corner from Record Plant, which is on West 44th Street and John was kind of quiet and I asked what the problem was and he said that he was having trouble with Angel Baby or Be My Baby, I forget which particular tune, but the problem was that in the cutting room he had mentioned the fact that

the various instruments were all -- seemed to be in different keys or different voices or they just weren't in balance and he was trying to get them in balance and he was just very disturbed about it and he said "Could I leave it off?"

I said, "Look, this is your record. You do what you want, and if you want to leave it off because it is artistically not good, then leave it off. It is not up to me, it is up to you."

Q Did Mr. Lennon say anything about what he had been trying to do to the two songs, Angel Baby and Be My Baby?

A I don't recall which of the songs, but I know that one of the songs -- it is just like all the instruments were in different keys. He told me they were just like waving, there just wasn't a steady tone to it, or some words to that effect.

Q Did Mr. Lennon say that he had tried to edit whatever song he was talking about?

A Well, he tried to get it so everybody was in effect in sync, all the musicians, but it was basically the fact -- then I think he seemed to -- I think I seem to recall him saying it seemed to bring back the memories of that particular session, when people were rather -- it was a rather difficult session when those songs were laid down or

those two songs were laid down.

Q Did Mr. Lennon say anything about that he had tried to save the two tracks?

A Well, he was always trying to save tracks. John doesn't like things in the can.

THE COURT: Did you think about it in connection witn the settlement or didn't that occur to you?

THE WITNESS: It didn't occur to me, your Honor. Mr. Lennon puts on his record those songs that he thinks are proper and artistically viable and a reflection of his artistic talent.

Q At that time, Mr. Seider, what was the posture vis-a-vis Mr. Levy?

A I believe Mr. Levy said -- had said he was coming out with the album and Capitol had learned from Klein the progress of Levy's developments.

Q So that this converstion you had with Mr. Lennon was after you had had the meeting with Mr. Levy where he had announced to you that he was coming out with the album?

A It was after, it was after January 30th.

MR. BERGEN: I have no further questions.

THE COURT: You may step down. You willbe recalled for cross examination.

(Witness excused.)

THE COURT: Do you have your witness to put on, Mr. Schurtman?

MR. SCHURTMAN: I call Mr. Philip Kolsky.

P H I L I P K O L S K Y, called as a witness by the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Kolsky, do you use a professional name in the music business?

A Yes, I do.

Q What is that name?

A It is known as Phil Kahl.

Q How long have you used that name?

A Since I been in the music business.

Q Which has been for how long?

A Approximately 32 years.

MR. SCHURTMAN: Your Honor, since all the witnesses have referred to Mr. Kolsky as Mr. Cahl, may we continue to call him Mr. Cahl for the purposes of this case?

THE COURT: If that would be helpful.

Is that all right with you, Mr. Cahl?

THE WITNESS: Yes.

Q Where do you reside?

A 10 East End Avenue, Manhattan, New York City.

Q Are you the vice president of the plaintiff, Big Seven Music Corporation?

A Yes, sir.

Q How long have you held that position?

A A little over four years.

Q What are your duties in that position?

A I am professional manager, vice president, and administrator of Big Seven Music Publishing Corporation, domestically and internationally.

Q Are you also employed by Adam VIII, Limited?

A No, sir.

Q Can you tell the court briefly your history and background in the music industry?

A When I was in the service for about three years I was assigned to Special Service. I put on shows for the commissioned officers and non-commissioned officers for about

three years.

THE COURT: When was this?

THE WITNESS: I was drafted a year before Pearl Harbor.

THE COURT: The second World War?

THE WITNESS: The second World War, your Honor. And after being in the army a little over three years I then became road manager for Popular Bands of America, Ina Ray Hutton and Bob Chester. After leaving them a joined a music company called Jefferson Music as a songman, also known as a song plugger. I then left Jefferson Music and joined a company called Saintly Joy Music Corp. I stayed with them approximately three years, left them and joined Walt Disney Motion Picture Company, the music division. I was there approximately five years. I left there and I met with Morris Levy and became a partner in a music company called Patricia Music.

Q When was that approximately?

A Early '50's. I remained with Morris Levy approximately ten years. We formed other companies, such as Cahl Music, Planetary Music Corp., record companies and after being with him ten years, I decidied to go on my own. My brother and I formed the record company called Diamond Records, Picture Tone Music Publishing Company, Toby-Ann Music Publishing Corp., and Richard Irwin Music Publishing

Corp. After six years I sold the company to Edwin H. Morris and Company and re-joined Morris Levy as vice president of Big Seven Music Publishing Corp., which I am today.

3-2 Q Mr. Kolsky, were you at the Club Cavallero on the evening of October 8, 1974?

A Yes, sir.

Q Do you remember seeing Mr. Morris Levy together with John Lennon and some other people?

A Yes, I did, sir.

Q First of all, how do you know the person was John Lennon?

A I had met John Lennon before. I had met him in June of 1974 at an award dinner given by Broadcast Music Inc., which is a collection society for publishers, composers and authors. Big Seven Music was given an award for one of their copyrights called Daddy's Home for the year of 1973. John Lennon was there getting various awards for various copyrights he had composed and performed. My wife and I were introduced to him and his wife. We had a very short conversation. Some photographers took some pictures of us. And that was my first meeting with John Lennon.

The second meeting was October 8 at the Club Cavallero, where I was introduced to him again, because he didn't remember me.

Q Take your mind back to that October 8, 1974, meeting and tell the court as best you can recall the setting of the meeting, how it got started, who was present, and then we will get into the subject of who said what to him.

A Mr. Lennon and Mr. Seider arrived at the Club Cavallero early October 8 in the evening. The maitre-d announced them, and Mr. Morris Levy came over. Mr. Seider introduced Mr. Lennon to Mr. Levy and they sat in the first booth entering the dining room on the lefthand side and they began talking.

THE COURT: Tell us each person who was there.

THE WITNESS: John Lennon, Morris Levy and Harold Seider.

Q Did anyone join the meeting?

A Approximately 15 minutes later or so I joined the meeting, and later on Miss May Pang joined the meeting.

Q Now, Mr. Cahl, you have previously testified in your deposition that you do not recall a Mr. Bernard Brown being at that meeting?

A Yes, I did. I have since heard that Mr. Bernard Brown was a witness and testified that he did attend that meeting. Other witnesses have testified that he did attend that October meeting, but to my best recollection I do not recall him attending the October 8 meeting.

Q Well, do you recall meeting Mr. Brown at some point around that period of time?

A Yes, I do.

Q At what point would that have been?

A On October 9 I got a call from Miss May Pang in my office to inform me that a Mr. Bernard Brown would be picking me up to take me to the Record Plant to hear the Phil Spector tapes. Mr. Brown came to my office. He was announced at the reception desk. My secretary came out, brought him into my office, and we chatted for a moment, and I don't recall whether it was a taxi or a limousine, but we drove over together to the Record Plant.

Q Well, in any event, getting back to the October 8 meeting at Club Cavallero, has your recollection been refreshed by the testimony of otner people that Mr. Brown was at that meeting on October 8?

MR. PRETTYMAN: I object. He says to his best recollection he does not recall him being there.

MR. BERGEN: Same objection.

MR. SCHURTMAN: I am asking him if his recollection has been refreshed.

THE COURT: Let him testify.

A I must assume, Mr. Schurtman, that if witnesses have testified --

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THE COURT: All we are interested in is your best recollection. I think you did cover it a minute ago, but let me ask you again: In view of all that you have heard what is your best recollection?

THE WITNESS: That he did attend the October 8 meeting.

Q Now, when you joined Mr. Lennon and Mr. Levy and Mr. Seider, was a discussion in progress?

A Will you repeat your question?

Q I will rephrase it. You say that at some point you joined Mr. Levy and Mr. Lennon and Mr. Seider at the table?

A Yes, sir.

Q Were they discussing something at that point?

A When I sat down Harold Seider was telling Morris Levy that they were having a problem with Mr. Phil Spector in getting a Rock and Roll album finished and they were there to try to make amends, to do something to correct the breach of contract that had occurred. John Lennon turned to Morris and told him all the stupid and crazy things that were happening at the studio between him and Phil Spector, and that he no longer could continue to finish the album, that he really tried to, but he gave up hope, and he began to work on another album, he began to write and to produce another album for himself, and that he was sorry that this had happened and he was

here to find a remedy to cure the breach.

Q What happened next? Give us your recollection of everything you heard or everything that was said in that discussion.

A John Lennon said that he was unable to obtain the masters that he had already recorded with Phil Spector because he had locked them up at his home. He had tried every way to get them, but he couldn't. Eventually, they got them and they had to pay between 80 and a hundred thousand dollars for them.

Mr. Levy asked Mr. Lennon how were the masters. He said, "They are pretty good. In fact, they are very good, but it needs a lot of editing and mixing, because some of the verses of the recordings were too long," but he felt he could salvage most of the recordings that Phil Spector had done. And at that time Morris Levy asked John Lennon, "Are you familiar with the TV commercials about albums, compilation albums, all sorts of mail order albums on TV?" And he said to Morris, "Yes, sometimes they are a pain in the ass, because I love watching TV, and these commercials are on TV every ten or fifteen minutes." Mr. Levy asked Mr. Lennon, "Have you ever seen mine." He says, "What are yours?" And he expressed some of the albums he had on TV. He said, "Yes, I have. I still don't like them. Some are good; some are bad."

At one point in this conversation, Mr. Schurtman, I was a listener most of the time. Mr. Seider had mentioned to Levy, "Would $200,000 settle this breach?" And Mr. Levy said, "No, absolutely not."

3-3 And I was then asked a question by Mr. Levy, "Explain to Mr. Lennon and to Mr. Seider why, having been an experienced music man and knowing the superstar that John Lennon was and the performer, that if he had recorded the obvious songs of Big Seven in his album, the catalogue of Big Seven would have enhanced far more than $200,000."

THE COURT: Is this something you are now saying or is this something you were saying at the time?

THE WITNESS: This is something what I was telling John Lennon, Mr. Levy and Mr. Seider. I told them in my experience as a music man that artists from all over the world who would listen to the songs that were in the album of rock and roll, songs that he had written, they would pay special attention to this, and many performers and artists would cover records. Cover records, your Honor, are records re-arranged by different artists who give different versions of their interpretation of the song. Over the years there may have been hundreds of cover records in various languages all over the world. We have that in our catalogue today. Then I explained some of the songs we had in the catalogue. There

is a song, Lullaby of Bird Land, which has over 350 to 500 different recordings all over the world. I would mention some other tunes. So the $200,000, I agreed with Mr. Levy, was not a remedy for the cure of this breach.

Q What happened next in the conversation?

A Mr. Levy continued to talk to John Lennon and Harold Seider about possibly getting the rights to a TV package, because if Mr. Phil Spector's recordings could be salvaged, he felt that a TV package would be astronomical and probably the most popular TV package ever in the United States, because of the stature of John Lennon being a superstar.

Q Did Mr. Lennon respond to that?

A Enthusiastically. He said, "In fact, Capitol Records do not have any TV rights in my contract." And he got very enthusiastic.

Q Mr. Cahl, when you say he got enthusiastic, how did he show his enthusiasm or what did he say?

A He wanted to know more about the mechanics of it, and Morris explained to him that he would reach a new audience he had never reached before, because we were doing songs from the '50's and '60's, and the kids who would now be grown-ups would be listening, saying, "John Lennon is doing these songs." This gave him more enthusiasm. At one time he said, "I can't wait to do this. This is a great idea, Morris."

And Seider sort of agreed with him, and, in fact, Morris said, "Harold, will I have any problem?" He said, "No, not with us." And John Lennon also made a remark to Mr. Levy that he was re-negotiating a contract with EMI that was almost going to be up within a year, and then in the European market he could foresee no problem because if you re-negotiate a contract with John Lennon, John Lennon is in a position to have a lot to say in the re-negotiation of a new contract.

Q Was there any further discussion?

A Morris Levy asked John Lennon and Harold Seider, "What royalty do you get?" I don't recall if it was Mr. Seider or Mr. Lennon, but one of the two said, "Twelve percent." And they began discussing the amount of songs that would be in the album. When I say "they," Morris Levy and John Lennon. Morris Levy suggested 20; John Lennon did not want any part of the 20 records at all. He said, "I want to do 15 or 16 --

Q 20 records?

A 20 titles, I am sorry. John Lennon said, "I would rather do 15 or 16, because I can create better arrangements and be able to do better sounds and I would rather just do 15 or 16. Morris agreed with him.

They then discussed, Mr. Seider, Mr. Lennon and Mr. Levy, the price of the TV mail order package. I don't

recall whether Mr. Seider or Mr. Lennon said $6.98 or $7.98 for the album and $8.98 or $9.98 for the 8-track. But Morris Levy disagreed. He said, "You got to give them a great buy, and since it is only going to be a single album, it should not be more than $4.95 or $4.98 for the album and $5.98 or $6.98 for the 8-track."

MR. PRETTYMAN: May I have the last answer read back? I keep having trouble hearing.

(Testimony read.)

- - -

Q Mr. Kahl, let me clarify one point in your last answer. You said you couldn't recall whether Lennon or Seider mentioned the higher prices. Is it your testimony that neither of them said it or that one of them said it?

A One of them said it.

Q But you don't remember which one?

A I can't recall which one.

Q How did the participants in this discussion leave the question of price?

A Because John had turned to Morris, as I said in my testimony before, that he was willing to give him the mail order rights to this TV package, and he said that Capitol had no TV rights, and we started to talk about songs that he wanted to do.

Prior to that --let me go back a little -- prior to that he had asked Morris if he could come to the Plant, Record Plant the next day to listen to the Phil Spector tapes?

THE COURT: Who asked who?

THE WITNESS: John Lennon asked Morris Levy.

THE COURT: All right.

A And Morris said yes.

Then the discussion went on between John Lennon, Morris Levy, May Pang and myself, and I don't recall

if Mr. Seider had anything to do in naming songs in consideration for John Lennon to do. I mentioned some songs, Morris Levy mentioned some songs, May Pang mentioned some songs, John Lennon mentioned some songs.

I took note of some of the songs and made notations of them.

MR. GRUMBACH: Your Honor, the witness has just mentioned May Pang I believe for the first time at this meeting. I don't believe we have had any indication of when she arrived.

THE COURT: No, I disagree.

Let us go on, Mr. Kahl.

A I made notations of these titles and there was further discussion between Mr. Lennon and Mr. Levy about getting a special rate on these copyrights.

The statutory rate in those days, your Honor, was 2 cents per side, and Morris Levy had mentioned to Mr. Seider and Mr. Lennon that we have to get the cheapest rate possible.

THE COURT: Who mentioned that?

THE WITNESS: Morris Levy to Mr. Seider and Mr. Lennon.

A Then Morris Levy said that Phil Kahl will take care of this situation, he will call the publishers.

John Lennon agreed and that part of the subject was dropped and they went into further discussion somewhat with EMI. I frankly --

MR. PRETTYMAN: What was that? I am sorry.

A Some further discussion between Harold Seider and Mr. Levy about EMI, about foreign rights, and John Lennon got more enthusiastic and then while Harold Seider and John Lennon were talking across one side and another John and I were discussing titles.

MR. SCHURTMAN: Would you read back the last answer?

THE COURT: Yes, please read that back.

(Answer read.)

Q Mr. Kahl, you said that Harold Seider and John Lennon were talking on one side?

A I said Morris Levy. I am sorry. I meant Morris Levy and Harold Seider.

Q I see. I wanted to clarify that.

A I said Morris Levy. I didn't mean John Lennon and I.

Q While Mr. Levy and Mr. Seider were talking on one side were you having a simultaneous discussion with Mr. Lennon?

A Yes, I was, sir.

Q Were you also listening to the discussion between Mr. Levy and Mr. Seider at that point?

A As best as I could, but I couldn't get all it, but I did hear something about foreign rights and EMI.

Q All right. What were you and Mr. Lennon discussing at that point?

A Titles, song titles.

Q Can you remember some of the titles that were mentioned?

A I mentioned some, he mentioned some, Rip It Up, Teddy, Get Ready, I had said Slippin' and Slidin', Why Do Fools Fall in Love, Tossing and Turning, John mentioned -- May Pang mentioned some: I don't recall. Morris Levy mentioned some: I don't recall. But I had written them down.

Q Do you remember any further things being said at that October 8th meeting?

A Yes. They started -- Morris Levy told John Lennon and Mr. Seider that he projected anywhere between 3 to 5 million albums and cartridges to be sold all over the world on this TV mail order package.

Q Was there any discussion about which of Mr. Levy's companies would handle the TV mail order package?

A Adam VIII. He had spoken to him earlier in the

evening and he had asked him if he had seen some of his commercials and John Lennon said he had.

Q Did Mr. Levy mention Adam VIII by name?

A Yes, sir.

Q Was there any discussion about a photograph to be used on the cover?

A At one time during the evening John Lennon said he knew a German photographer that had some picture of his and that he would be in touch with him and it was dropped that he would be interested in using this picture maybe for the cover of the album.

Q Mr. Levy explained to Mr. Lennon and Mr. Seider the mechanics of a TV promotion?

A Yes, he did, sir.

Q Can you tell us as best as you can recall what Mr. Levy said on that point?

A They were talking about costs and since I don't know anything about the operation of Adam VIII I did not pay too much attention to it. I think I was conversing a little bit with May Pang. We exchanged phone numbers while they were discussing and jotting numbers down.

Q For what purpose did you exchange phone numbers?

A Well, for us to be in constant touch with each other now that we were in the middle of this type of meeting.

and I gave her my office number, she gave me two phone numbers. I told her mine and she gave me two numbers where I can reach her and Mr. Lennon or Mr. Lennon and her together in the office wherever they were or in the studio.

Q Was any reference made in the discussion to the use of retail fulfillment centers?

A There was discussion, but I never knew what it meant really, because I am not involved in TV mail order. But there was discussion, but I didn't pay attention to it.

Q But you did hear retail fulfillment centers being mentioned?

A Yes, I did.

Q By whom?

A I heard it by Morris Levy.

Q Was there any discussion about the arrangement with Phil Spector for him to be compensated for the use of his tapes?

A Yes, there was.

Q Will you tell us what was said on that subject?

A When Morris Levy had asked either Mr. Seider or Mr. Lennon what the John Lennon royalty was, and it was 12 percent, John Lennon I think said that on this rock and roll package that Spector was producing he was to get 3 percent. Since he did not finish this album and whatever

part of the album he could salvage he would pay him pro rata and it would be out of John Lennon's royalty, and this is what John Lennon said to Mr. Morris Levy.

Q You mean John Lennon would pay Spector?

A Yes, sir.

Q When you say out of John Lennon's royalty, what royalty are you referringto?

A The 12 percent of the TV package, of the retail price.

Q Do you recall anything else being said at that meeting?

A I remember John saying to me -- I was sitting directly across -- that he couldn't wait to leave, that he was so excited, and he also told me that "I am grateful that you are going to help me in getting all this music, you know, together."

Q Was there any discussion about the length of time that it takes to conduct such a TV promotion?

A I do not recall that, sir.

Q You have testified that you heard Mr. Levy --

A Oh, yes. Let me say this:

At one time during the conversation there was talk about doing this quite rapidly and even in time for Christmas.

Q But you testified previously that Mr. Levy explained the mechanics of a TV promotion to Mr. Lennon and Mr. Seider. Do you recall whether in that explanation there was any reference to how long the TV commercials are shown?

A Oh, yes. He usually runs these commercials --

Q No, tell me what you heard, not what you think.

A Well, to my best recollection, I heard him say that he runs commercials anywhere between 8 and 16 weeks.

Q Mr. Levy said that?

A Mr. Levy said that to Mr. Seider and Mr. Lennon.

Q Do you recall anything else about the meeting at this point?

A Well, no, except that I was excited too because I was involved with Morris Levy and the response that we got from John Lennon, and he was more than charming to Morris Levy and they sort of took a liking to each other, because I noted that they were talking together and he was accepting Morris Levy's knowledge of the music business, not only as a TV packager, also as a man with his background, and they responded and he says "Morris, you got a deal with me. I want you to have the package, and I will have no problem in giving you this package, because Capitol does not have any right -- he repeated that a few times.

Q Did he say Apple did not have any right?

A Capitol I said.

Q Was it your understanding at the end of the meeting that some sort of a deal had been made between Mr. Levy and Mr. Lennon?

MR. PRETTYMAN: Objection, your Honor.

THE COURT: What is the question? Let me hear the last answer read back, please, and then we will have this question read.

(Record read.)

MR. SCHURTMAN: Your Honor, I respectfully point out --

THE COURT: Yes. I will overrule the objection.

A After spending over three hours, approximately three hours or more -- I may be wrong -- and after this whole conversation, there was no question in my mind there was a deal made. When the meeting ended Morris Levy and John Lennon and Harold Seider shook hands and they left.

Morris and I stayed at the Club for a while. Naturally, Morris was very excited about it. That was the end of that evening.

Q What was your understanding, Mr. Kail, as to what would happen to that original Come Together settlement agreement, the one that you say will be breached?

MR. PRETTYMAN: I object unless he states what he bases his understanding on.

MR. SCHURTMAN: That will be my next question. I would like to get his understanding at this point, your Honor.

THE COURT: All right.

A That this meeting had cured -- this meeting, of shanking hands and telling Morris Levy "You got my TV package deal," would cure the breach of the contract.

Q And what was your understanding as to the royalties that were to be paid under this deal that you have testified to?

A That John Lennon would get 12 percent, that he would take care of Phil Spector.

Q Did anyone say anything about who would pay the advertising, packaging, mail order fulfillment, and so on? Did you hear any discussion on that point?

A Yes, I did, sir. When he was telling -- when John -- when Morris Levy was telling John all the facts about TV packaging, he would pay for the commercial, he would pay for the pressing, he would pay for the album, he would do all the advertising, and he would pay all the costs except the recording costs.

Q Who was to pay the recording costs?

A John Lennon.

Q Was it your understanding that the album that would be prepared for this TV package would contain some of the Spector songs?

A That night I wasn't sure, because John Lennon had said that the Spector recordings were good, but he wanted Morris Levy to hear them the next day, and John Lennon felt that he could salvage some of the recordings that he had made and that we would use, if they were salvaged, into this package that he was giving to Mr. Levy, to Adam VIII, and in fact Mr. Levy had told Mr. Lennon that "If you only decide to salvage four or five you would not have to give Phil Spector 3 percent, you would only have to give him pro rata of whatever was recorded and to be released."

Q Did you see Mr. Lennon again the next day?

A Yes, sir.

Q Where did you see him?

A At the Factory, at the recording studio, the Plant Factory or the Factory Plant. I get them mixed up.

Q The Record Plant?

A The Record Plant. I am sorry.

Q And who was at the recording studio?

A When I arrived there with Bernard Brown Mr. Levy had already been there, Mr. Garlick, John Lennon,

May Pang, some engineers, and a group of other people on the outter part of the studio, and when I arrived I was invited into the listening studio, and John Lennon proceeded to pay the Phil Spector tapes.

Q Did Mr. Lennon play only those songs that belonged to Big Seven or did he also play other songs?

A Oh, he played other songs, sir.

Q Was there any discussion about the songs at that point?

A I am a music man. I loved them all, and I told that to John Lennon.

Q Was anything else said about the songs or the tapes or the album?

A No, except that John Lennon felt that he could salvage a lot of these cuts and that it needed editing, and Morris suggested that too to him, that some were too long, he could shorten some of them, he could sweeten some of them, he could mix them better, and that there was enough there that he could salvage, and the amount of how many, I don't recall how many there were, whether four or five, I don't recall, or maybe more, I don't recall.

Q Did you see Mr. Lennon again that evening?

A Yes, I did, sir.

Q Where was that?

A In fact, I had a glass of champagne that afternoon with John Lennon and I found out that he was attending a dinner that night for the president of Atlantic Records, Mr. Ahmet Ertegun, and I told him that I would be there with my wife.

He says, "Well let's look for each other."

I attended the dinner and I couldn't -- it was the grand ballroom of one of the big hotels, so I couldn't see John Lennon, and I had a very poor table, and some of these dinners are very boring, so I left quite early, because I had known that Morris Levy had invited John Lennon to the club for a party because it was his birthday, so my wife and I left early, and John Lennon arrived at the Club with a group of people and when he saw me he says "You know, I looked for you, I couldn't find you," and I told him I had snuck out a little early.

He said, "I couldn't. I had a ringside table. It would have been a little embarrassing."

Q Did you and Mr. Lennon discuss any business that evening at the Club?

A Of October 9th?

Q Yes.

A No, sir.

Q You testified that at the October 8th meeting

there was a discussion about you getting together with May Pang to pull some old rock and roll songs together. Can you tell the Court what, if anything, you did along those line?

A Well, the next morning which I got in the office -- it wasn't that I was getting together with May Pang: that we would be in touch with each other-- I called May Pang. She wasn't in. She called me back and she gave me some more titles I had typed.

My secretary had typed out some of the titles I had written down and my secretary proceeded to get the name of the publisher, the name of the aresti who recorded the song, and the owner of the publishing company, because I was quite familiar with many of the publishers in the United States, and whenever she called, she called me for titles, I, you know, marked the titles down, got the copies, or whatever I had to do.

Q Mr. Kahl, let me show you a document that has previously been marked Plaintiffs' Exhibit 23 for identification and ask you if you can tell me what that is.

A Yes, sir.

Q What is that?

A These are the titles that we had discussed on October 8th and some time during the day of Octiber 9th and

I made up a list of the title, the artist, the label, the writers and the publisher.

On October 8th Mr. Lennon and Mr. Levy had instructed me -- actually, Mr. Levy had instructed me, and John Lennon agreed, to get on the phone and call some of these publishers and try to get the lowest rate I possibly could in reference to this album for TV.

I proceeded to make some phone calls. Do you want me to continue, Mr. Schurtman?

THE COURT: Can I see that exhibit?

Q Show the exhibit to the Court, Mr. Kahl.

What I would really like you to tell me at this point is what this exhibit is.

A These are the titles of songs that were in consideration for John Lennon to record for the balance of the rock and roll album for Morris Levy, for Adam VIII.

Q Who prepared this exhibit?

A My secretary, Maria Acevedo.

Q And did you give it or show it to Miss May Pang?

A I either sent it to her by my runners or the next time I saw him I gave it to him in person or sent it to them by messenger by one of my runners.

MR. PRETTYMAN: Did you say sent it to them?

THE WITNESS: Miss May Pang or John Lennon. When I say them it is May Pang or John Lennon, because that is the only people I dealt with in reference to this matter.

MR.SCHURTMAN: I offer this exhibit in evidence.

MR. PRETTYMAN: May I inquire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. PRETTYMAN:

Q When was this prepared?

A What date?

Q Yes.

A October 9th.

Q It was prepared October 9th and it is entitled "Songs Given to John Lennon."

A Yes, sir.

Q And does that mean that those songs were given to him the night before?

A Oh, no, sir.

Q What does it mean?

A I could have given them two, three days later, because -- well, I just answered your question.

Q So it means either songs given to him or songs to be given to him?

A These songs had already been given to him?

A Given to him. I don't know -- it was not on the 9th, but it could have been on the 10th or the 11th.

Q But it wasn't on the 8th?

A Not on the 8th, no, sir.

Q When you say given to him, you don't recall whether you sent this by messenger, and if you did send it by messenger, to whom did you send it?

A I sent it to May Pang or John Lennon.

Q But you don't recall which?

A To me it is the same.

Q I say, but you don't recall to whom it was addressed?

A No, I don't recall to who it was addressed.

Q And if you gave it to one or the other of them, what occasion was it that you gave it to them on?

A For what occasion?

Q Yes, what date was it or what occasion was it where you handed it to either May Pang or Mr. Lennon?

A WEll, it couldhave been the 10th or the 11th. I don't know the date I gave it to them.

Q Could it have been some time after the 11th?

A No.

Q It had to be the 10th or the 11th?

A No, it could have been -- could have been

the 10th or the 11th, yes.

Q No. I say, could it have been after the 11th?

A Possibly.

Q And did you dictate this to your secretary?

A Yes, sir.

Q You said your secretary prepared it, but you don't mean that she made up --

A Oh, no, not the list. I did.

Q Did you write it out or dictate it over a machine or --

A I had a list of songs and I dictated some other songs. May Pang had called me and gave me some titles too.

Q You say you had a list of songs and you reached for your pocket. Did you have a written --

A Well, I will give you a similarity. I write things on envelopes.

Q When had you written that list?

A October 8th.

Q Then May Pang called you on October 9th and gave you some additional songs?

A A couple of titles, yes.

Q Would you remember which ones?

A No, I couldn't remember what titles she gave me.

Q And by October possibly the 10th you had around 19 or 20 titles and their artists and their labels and their writers and their publishers and you sent this to Miss Pang or Mr. Lennon for what purpose?

A For him to consider picking and choosing the songs he would consider for recording.

MR.PRETTYMAN: Thank you.

I object to the exhibit, your Honor, as having an insufficient foundation.

MR. BERGEN: Same objection.

THE COURT: Let me ask you this: What did you actually give to your secretary? Did you give her all the information on that or some of it and did you give it in a list or did you dictate it? What did you do?

THE WITNESS: I dictated -- I gave her the list of the title.

THE COURT: You say you gave. You gave her the envelope that you had written on?

THE WITNESS: No, I dictated that to her, sir, and I gave her the title of the song. I didnt' know the artist, so she had to check out the artist that had the original recording of that song, and the label, the recording company that had the artist, and the writers and who the publishers were.

THE COURT: All right. I will overrule the objection and recieve it.

(Plaintiffs' Exhibit 23 was received in evidence.)

MR.PRETTYMAN: Could I have the last answer read, your Honor,please?

THE COURT: Yes, certainly.

(Answer read.)

MR.PRETTYMAN: The word was she, that she did that.

THE WITNESS: Maria Acevedo and her assistant. I have two secretaries.

BY MR. SCHURTMAN:

Q Is that the name of your secretary?

A I have two, Maria Acevedo and the other secretary is Miss Hodges.

Miss Acevedo is no longer with the company. She is now at CCNY studying to be a linguist.

And she has been with the company prior to my joining Mr. Levy, she has been with Mr. Levy, publishing division, for I would say seven, eight years.

Q Mr. Kahl, did there come a point where there was a discussion about rehearsals by Mr. Lennon and his musicians?

A Yes. That took place after John Lennon's birthday party, I think the following Monday. May Pang and John Lennon came to Club Cavallero and Morris -- they had an appointment with Morris Levy. I joined them. John Lennon was very enthusiastic. He says he has already gotten in touch with musicians, he is going to start rehearsal as quickly as possible for this TV package, and at that time Morris Levy suggested to John Lennon that if he would like he would give -- let him use his farm up in Ghent, New York for rehearsals and that he would have the musicians with him all the time and he wouldn't have to use studio time and wait for musicians to come late, and John thought a bit for a while and thought it was a pretty good idea and he says fine, and they made arrangements for having the rehearsal at Mr. Levy's farm.

Q Was there any discussion about getting instruments for the farm?

A Yes, there was, but not exactly -- yes, there was. May Pang called me and asked me to get some percussion -- percussions are drums or some kind of equipment, drums -- and some amplifiers to be brought up to the farm.

I told her I would take care of that and I would make all the arrangements.

Q Mr. Kahl, let me show you Plaintiffs' Exhibit 24

for identification. What is that?

A This is a list that John Lennon gave me and asked me to obtain five piano copies or lead sheets of each of the typewritten songs, except the last few that are crossed out.

Q When did he give that to you?

A And also John Lennon told me to try to use my best effort in getting the original recording of the title and the artist.

Q When did Mr. Lennon give you that list?

A At that meeting when they decided they were going to rehearsal.

Q This was the meeting at the Club Cavallero?

A At Club Cavallero, yes.

Q The Monday meeting?

A The Monday meeting, sir.

THE COURT: Can I hear the answer about what Exhibit 24 is.

(Answer read.)

Q Do you know if Mr. Lennon's handwriting is on this sheet?

A Yes, I do, sir.

MR. SCHURTMAN: Let me offer it in evidence and then I will ask you some questions about it.

THE COURT: Is that in Mr. Lennon's handwriting?

THE WITNESS: Part of it is, sir.

THE COURT: What part is?

THE WITNESS: The bottom part, your Honor.

THE COURT: Whose handwriting is the top?

THE WITNESS: The top is mine, your Honor.

THE COURT: I thought you said Mr. Lennon gave you this list. You mean physically gave you that piece of paper?

THE WITNESS: This piece of paper, your Honor.

MR. SCHURTMAN: Let me clarify that, your Honor, if I may.

THE COURT: Please do.

Q Mr. Kahl, look at this exhibit. First of all, there are certain typewritten song titles on it.

A Right.

Q Do you know who typed these?

A No, I don't.

Q Were they on the sheet of paper when Mr. Lennon handed it to you?

A This was?

Q The typewritten song titles.

A Yes, they were.

Q At the top of the sheet there is a handwritten notation which says "5 copies of piano copies" and then the words "Get piano tuned." Whose handwriting is that?

A That is mine, sir.

Q And when did you write on that sheet of paper?

A The night -- that Monday night meeting.

Q After Mr. Lennon --

A After Mr. Lennon handed me this paper I followed his instructions by putting --

Q So you made a notation on the top?

A Right.

Q At the bottom of the sheet there are several song titles in handwriting. Whose handwriting is that?

A I believe that to be Mr. John Lennon's.

Q And was that on the sheet when he gave it to you?

A Yes, it was, sir.

Q On the side of these handwritten song titles are the words "this stuff in the can." Do you know whose handwriting that is?

A Mr. Lennon's handwriting.

Q On the back of the sheet there are certain handwritten notations. Can you identify the handwriting?

A Those are all mine, sir.

MR. SCHURTMAN: I offer it in evidence.

THE COURT: Any objection?

MR. PRETTYMAN: May I ask some questions, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. PRETTYMAN:

Q Did Mr. Lennon write the songs at the bottom of Plaintiffs' Exhibit 24 for identification in your presence?

A No, sir.

Q Was Plaintiffs' Exhibit 24 for identification given to you before or after you had sent or given Plaintiffs' Exhibit 23 for identification to May Pang or Mr. Lennon?

A This was given to me the night of the meeting after his birthday, which I assume was around the 14th of October. I do not know the exact date.

Q My question was was it given to him before or after you sent or gave Plaintiffs' Exhibit 23. That is the one you were just testifying about a moment ago?

A Yes.

MR.SCHURTMAN: Why don't you show it to him?

MR.PRETTYMAN: Sure.

Q In other words, the question is which of these two exhibits was given or sent first.

A This was given to me. I didn't send that.

Q You are pointing to Plaintiffs' Exhibit 24 for identification and the question is whether Plaintiffs' Exhibit 24 for identification was given to you before or after you sent Plaintiffs' Exhibit 23 to Mr. Lennon or Miss Pang.

A To my best recollection, this was given to Mr. Lennon or Miss Pang before and I received that after.

Q I want you to confirm very carefully what I am about to say,because I certainly don't want to misstate what you pointed to. The record, of course, doesn't get your pointing.

Do I understand that you sent Plaintiffs' Exhibit 23 to Miss Pang or Mr. Lennon before you were given Plaintiffs' Exhibit 24?

First of all, did I state correctly what you just said to me?

A I understood what you said to me.

Q Pardon me?

A I understood what you said.

Q Did I say it correctly?

MR. SCHURTMAN: Your Honor, is this proper voir dire?

THE COURT: Sure it is.

MR. SCHURTMAN: We are talking about the admissibility of an exhibit.

THE COURT: No. Let us let it go. Let us just get an answer.

MR. SCHURTMAN: All right.

A This "Songs given to John Lennon" --

Q That is 23.

A -- this is a file that was kept. When I -- this was used for getting rates.

I also made up a list of songs to John Lennon. This is a copy of it that I sent to John Lennon. John Lennon chose from the 20-some odd songs these songs.

Q Pointing to 24?

A 24.

MR. PRETTYMAN: Is it clear now, your Honor, which one went first?

THE COURT: I have his answer, yes.

Do you have any objection to 24?

MR. PRETTYMAN: Let me just make one quick check here.

Q Is all of the handwriting on the back of 24 yours?

"Hansen 246-4175" is mine.

"Downstairs Records, 6th Avenue 42 subway

concourse, 55 West 42nd Street," that's mine.

The one that is crossed out, "565-9283," is my handwriting. "221-8989 is my handwriting."

Q So all of the handwriting on the back is yours?

A Yes, sir.

Q Does it relate to this exhibit?

A It relates to this exhibit.

Q In what way?

A In obtaining the original recording that Mr. Lennon requested of me to get and the piano copies.

It was not difficult for me to get the piano copies or lead sheets. It was very difficult, and it was hours and sometimes late at night, to get the recordings of a Gene Vincentor a Buddy Holly, and when I did find it I some time had to pay quite a bit of money for it.

Q My question though, Mr. Kahl, was the reference to the subway concourse. That is something having to do with --

A With the records I had to obtain for Mr. John Lennon.

Q This is where you had to go to get them, in other words?

A To get them, right.

THE COURT: All right. We will take a break.

(Recess.)

MR. PRETTYMAN: No objection to Plaintiff's Exhibit 24 for identification.

MR. BERGEN: No objection.

THE COURT: That is received.

XXX

(Plaintiff's Exhibit 24 for identification was received in evidence.)

BY MR. SCHURTMAN:

Q Looking at Plaintiff's Exhibit 24, will you clarify a couple of points for me. You say the handwritten titles on the bottom of the page you believe to be in Mr. Lennon's handwriting. How about the very last title, Ya Ya?

A That is my handwriting.

Q When did you put that on?

A I put that on when I saw it, this stuff in the can, I put that down, because I had known that John had already recorded it in the Bridges Album. So I put that down as another song that was in the can. I just put that down myself.

Q Did you discuss it with Mr. Lennon?

A No, I did not.

Q Did you discuss it with Mr. Levy at that point?

A No.

Q You simply put that down?

A I put that down myself, it was in the can, because it was already recorded once.

Q Now, next to the various song titles are check marks and circles. Who put these check marks and circles down?

A I did not do it. I got it that way. I assume Mr. Lennon did that.

MR. PRETTYMAN: May I strike the last part?

THE COURT: Yes, I will strike the assumption.

Q You were questioned by Mr. Prettyman about the handwriting on the back, where there is a reference to Downstairs Records. What is Downstairs Records?

A That is a record shop that is known as a collectors' item. They have a library of records that are recorded by some of these artists that Mr. Lennon had asked me to get, so I made inquiry and sent one of my runners down to pick up some of the records that Mr. Lennon had requested.

Q Let me see if I can get something clarified, Mr. Kahl. You were getting sheet music for the songs requested by Mr. Lennon? Is that correct?

A Yes, sir.

Q And you were also getting physical records, phonographic records that had been made by somebody else?

A The original artists that made that recording of the title that he requested.

Q Did Mr. Lennon explain to you why he wanted the original phonograph records?

A Because he wanted to hear that version that was done years ago and then he would give his interpretation of that title.

Q One last question about this sheet. At the top it says "Get pianc tuned." In what context did you write that on this exhibit?

A When Mr. Lennon had agreed to come to Mr. Levy's home, Morris Levy asked me to call his home and have the housekeeper get the piano tuned, and I explained to her there would be some people coming up for rehearsals. I didn't tell her who was coming.

Q When you say Mr. Levy's home, you mean the farm in Ghent?

A The farm in Ghent.

Q Did you go to the farm the following weekend?

A Yes, sir.

Q Who was at the farm?

A I arrived late in the evening of October 17, and May Pang and John Lennon and Morris Levy already had been there. I got there with my wife Winifred Kahl around between 8 and 10. I had sent limousines to Kennedy Airport and limousines to other places, and I was waiting for some of the musicians to arrive. I don't recall, but my memory makes me believe that Klaus Voorman, I think, came from California,

and he arrived quite late, and some other musicians arrived later on, but one was missing. He didn't arrive until the next day. And I went to bed about 1, 2 in the morning, and over the period of the weekend I had seen Mr. Jerry Masucci there. I saw Mr. Chapman there breifly.

5-2 Q Who was Mr. Chapman?

A A friend of Mr. Levy's I had met for the first time. I didn't know what he was or who he was. He was just there.

Q Anyone else?

A There were people coming and going, but I don't recall who they were.

Q Do you know a Mr. Sheretsky?

A Norman Sheretsky, yes, he was there.

Q Now, can you describe very briefly, because we have heard this from several witnesses, what happened at the farm in terms of the rehearsals?

A Well, I was involved at the farm in rehearsals, because knowing what rehearsals are I had to place the piano in a certain place of this large living room where they were going to rehearse; I set the chairs for the guitar and the drums; I had brought up an attache case and in alphabetical order I had all the copies of the sheet music and the records. I may have been missing one or two which I could

not get hold of. But I got most of them. I then put these folders on the place where I had set up this rehearsal stand. John looked at the lead sheets and requested that they be typed because he did not like to read the lead sheets from the music. May Pang did all the typing from all the titles that he had requested and that I had brought with me.

Sometime Friday after lunch rehearsals began, and it was a beautiful day, and this living room has a sliding bay window, and I sat outside. And they would be rehearsing and I would be listening, and I had nothing to do with the physical part of the rehearsal and made no comments. And after an hour of two of rehearsal the sliding door would open up and I would act as a sort of host and see whether they wanted a cup of tea or coffee or a drink, a soft drink or hard drink.

John Lennon sat on a lounging chair, and he was sort of chilly, and my wife went and got him a sort of robe or blanket and put it around him. And we took some pictures together. And they broke for about 20 minutes, and they went back to rehearsal. They rehearsed almost till dinner time, and I would sit in the room when they were rehearsing and made no comment.

Q Mr. Kahl, can you tell us your best recollection of how many hours of rehearsals took place that weekend?

A Between Friday, Saturday and Sunday, I would say

between 20 and 25 hours of rehearsal.

Q Did you hear any discussions between Mr. Lennon and Mr. Levy, or Mr. Lennon and any of the musicians concerning the album that was being rehearsed for?

A I think there was a large round table where you could seat probably 12, 13 or 14 people, and then he would have another round table smaller adjacent to it. I sometimes sat at that time, sometimes at the master table, and the musicians were sort of interested in what was happening, and John told them that this was going to be a TV package of old rock and roll songs.

MR. PRETTYMAN: Your Honor, I object.

THE COURT: Yes, just say what you heard.

THE WITNESS: I heard, your Honor, that Klaus or Mr. Asher asked John or made inquiry with Mr. Levy about the TV package, and they thought it was a marvelous idea.

Q Did you hear anyone say anything about Mr. Lennon making this album for Mr. Levy?

A Numerous times over the weekend, yes, sir.

Q Tell the court exactly what you heard and from whom?

A I heard him tell it to Mr. Chapman.

Q You heard whom tell it to Mr. Chapman?

A I heard Mr. Levy say it, I heard Mr. Lennon say it to some of his musicians. I can't recall the names.

MR. PRETTYMAN: Your Honor, may I object. I don't know who is talking to whom.

THE COURT: He is saying he heard Mr. Levy tell Chapman and he heard Mr. Lennon tell the musicians.

What did Mr. Lennon tell the musicians?

MR. PRETTYMAN: I thought Mr. Lennon told Mr. Chapman.

THE WITNESS: No, I didn't say that. Mr. Lennon had told the musicians.

THE COURT: When you say he had told them, I am not interested in that unless you heard.

THE WITNESS: I heard John Lennon tell the musicians, your Honor, that he was doing this rock and roll package for Morris Levy and that it would be a nostalgic rock and roll package, his interpretation. They were impressed with it.

Q Now, did any of the musicians tell you that they have heard from Mr. Lennon that he was making this package for Mr. Levy?

A On the way home --

MR. PRETTYMAN: For the record I object. We have been very lenient --

THE COURT: Is this an objection or isn't it?

MR. PRETTYMAN: I think that is a valid question. I will withdraw it with the hope that we will get the whole

story.

THE COURT: You say on the way home --

THE WITNESS: On Sunday, late afternoon I took Klaus Voorman and his wife or girl friend -- I never questioned him -- and we were riding home, it took about two and a half hours, three hours, and he had mentioned to me that John Lennon is going to have a big album here, it is going to be a great album, a great thing for TV, and he also mentioned, Klaus Voorman, what a marvelous host Mr. Levy was, and he also complimented my wife and myself in helping, being sort of a host there, too, and was delighted to have spent the weekend rehearsing, and he was now prepared to go into the studio to make this album.

I dropped him off at Central Park South -- I don't recall the hotel -- and that was the last time I saw Klaus Voorman.

Q Did Mr. Voorman tell you in that conversation that Mr. Lennon said to him that this album was being made for Mr. Levy?

MR. PRETTYMAN: Objection.

THE COURT: Yes.

MR. SCHURTMAN: Considering the fact that when the defendants were putting in their case you allowed --

THE COURT: I am tired of having you cite to me

examples of other parts of the trial. I have to each thing as it comes, and we can waste a lot of time. If I followed up your suggestions and look into all the instances of other so-called similar things happening at the trial, we can spend a lot of time. And I am not going to do it. I will sustain the objection. This is leading.

Q Where did you take Mr. Voorman?

A I took him to his hotel, Central Park South and 59th Street. I don't recall the hotel.

5-3 Q Have you ever seen Mr. Voorman since then?

A No, sir.

Q At any time during October, Mr. Kahl, did you tell anyone that Mr. Lennon and Mr. Levy had a deal to make a TV package?

MR. BERGEN: Objection. Completely irrelevant.

MR. SCHURTMAN: Why is it irrelevant?

MR. BERGEN: He could have gone on a television network and announced it.

MR. SCHURTMAN: Defendants contended that Capitol did not know until sometime late in January.

THE COURT: The purpose is to show that they knew.

MR. SCHURTMAN: Yes.

THE WITNESS; Ask me the question again.

Q During October and November, 1974, did you tell

anyone that Mr. Lennon had agreed to make a TV package for Mr. Levy?

A Yes, I did, sir.

Q To whom did you tell that?

A I told it to a gentleman by the name of Murray Deutsch, who is president of the New York Times Newspaper Publishing Division. They are in the music business, music publishing business. I told him that John Lennon had given Adam VIII, Morris Levy, the rights to a TV package. He said, "I got to get my songs in there." It was a funny remark. Being a music man, he wanted to get one of his songs in the album. I also told the publisher, a man by the name of Duke Niles, president of Rayven Music.

THE COURT: Did you tell anyone at Capitol or EMI? I thought that was the point that you were going to connect or indicate, that he told someone at Capitol or EMI. If not, I will strike the testimony and sustain the objection.

MR. SCHURTMAN: Your Honor, I am offering it for the purpose of showing the people in the music industry, which Mr. Seider has described as a small gossipy industry, heard that Mr. Levy was putting out this package for Mr. Lennon, that they were working on it together, that this was common knowledge in the industry in October, November and December of 1974. I am offering it for that purpose. I am also

offering it for the purpose of showing what the state of mind of the Big Seven officials were, since apparently that has been deemed a relevant issue in this case.

MR. BERGEN: I object and move to strike it. He said a couple of minutes ago he was introducing it to show that Capitol knew, and Mr. Kahl has not said that he told anybody from Capitol or EMI.

MR. PRETTYMAN: The fact that he mentioned it casually to two people does not indicate that they knew.

MR. SCHURTMAN: There will be a great deal of other evidence on the point, but I can only put it in piece by piece.

THE COURT: We can be here a long time. You tell me there is a great deal of evidence about knowledge in the industry as circumstantial evidence that there was a contract. This is getting completely out of hand. How long do you expect to have me captive here. I thought we had a 10-day trial now, and we have a longer trial here because somebody did not bother to put anything in writing, we have a lawsuit that can go on for weeks. There are other things the court has to do and I am sure you gentlemen have to do. Now, there is a limit. If somebody will tell me it was commong knowledge in the industry, and he testified he told Murray Deutsch in a laughing way this and that, and he told somebody else, it

really is basically meaningless, and as far as his state of mind, I have heard enough of the state of mind of Mr. Levy and these people. I don't need any more. Let's go on. There has to be a limit to this case.

MR. SCHURTMAN: What is your ruling?

THE COURT: I will sustain the objection and strike the testimony.

Q Do you know an attorney named Michael Graham?

A I met him once at the Club Cavallero.

Q Were you here when Mr. Graham testified at this trial?

A No, I was not, sir.

Q Where were you at that poin

THE COURT: He did not need to be here.

MR. SCHURTMAN: May I get a ruling on one point? I represented to your Honor that Mr. Kahl had to leave the trial and go to Florida because of illness in his family.

THE COURT: I never doubted that for a minute.

MR. SCHURTMAN: He had to go for medical emergencies. Do you want to hear testimony on that point?

THE COURT: I have no doubt on that.

MR. PRETTYMAN: We certainly raise no point about it.

Q Did you attend a meeting with Mr. Levy, Mr. Seider,

and Mr. Graham, at the Club Cavallero at one point?

A Yes, I did, sir.

Q Do you remember when that was?

A I don't recall the date, no, sir.

Q Was it in November, 1974?

A Sometime in November.

Q Were you present during the entire meeting?

A No, sir.

Q Were you present during part of the meeting?

A Part of the meeting.

Q Can you tell the court what,if anything, was discussed during the time you were there?

A Mr. Seider and Mr. Graham were questioning Mr. Levy in reference to the Lennon package, of what he would spend, what the royalty would be, what he would spend for TV sponsorship, what his costs would be, and it was all in reference to the John Lennon LP Album for mail order. I was not present in its entirety. I had gotten up a few times, since I knew they were just talking figures in reference to the John Lennon package, and they were there, I assumed, to consummate a deal regarding the costs and what was going to happen in putting this package out.

Q Did you hear any discussion about a joint venture?

A Yes, a joint venture. There was a discussion of a

joint venture in Europe and Morris Levy did not respond to it, he did not want to have a joint venture.

Q Now, were you present at the Club Cavallero when there was a discussion about delivering a tape to Mr. Levy?

A Yes.

Q I refer to the tape of the Lennon album?

A Yes, I was there.

Q Can you tell the court in your own words what you recollect about that discussion?

A John Lennon came in with May Pang and another couple, and Morris Levy sat with him, and then I talked over and I heard John Lennon say, "It is finished; it is great; I don't want to hear it any more; it is your baby." And so Morris said to John Lennon, "Where is it?" He says, "It's at the studio, at the Record Plant."

He says, "Can I have it?" He says, "Yes." And I don't recall who went to the phone, but the phone call was made, to the Record Plant, and it may have taken a half hour or an hour or so, a box was delivered, and John Lennon presented the box to Morris Levy. I was sitting at the table when that occurred. I had an 8:30 p. m. appointment in the office and I asked Mr. Levy to give me the box and that I would put it on his desk, because it looked like they were going to spend sometime in the club and I didn't want it to go astray.

So I took the box with me home. When I arrived in the office at approximately 8:15 I went upstairs to Mr. Levy's office and left it on his desk.

Q Mr. Kahl, did Big Seven assign its rights with respect to this television package to Adam VIII?

A Yes, sir.

Q And after this assignment did you have anything further to do with the matter?

A No, sir.

MR. SCHURTMAN: I have no further questions.

THE COURT: Now, what is your schedule, Mr. Kahl. What we have been doing so far is, except in cases of out-of-town witnesses, we have gone through the direct testimony of everybody and have been deferring cross in the hope that maybe the cross-examination can be shortened when it ultimately comes. But if you are needed back in Florida, we can try to finish up with you now. Do you want to get back?

THE WITNESS: I would prefer, your Honor, to be finished up, because I would want to be with my wife.

MR. PRETTYMAN: We are prepared to accommodate him.

THE COURT: You go ahead with your cross-examination.

Is that all right with you, Mr. Schurtman?

MR. SCHURTMAN: Yes.

CROSS-EXAMINATION

BY MR. PRETTYMAN:

Q Mr. Kahl, you have said that at the October 8 meeting Mr. Levy mentioned the fact that he hoped to sell between three and five million of these albums and tapes, and that the price, the price range that you mentioned was somewhere between $4.98 and $6.98.

A $4.98 or $4.95 for the album and $5.98 or $6.98 for the 8-track.

Q So if you assume arguendo with me that there was, in fact, a deal, we are talking about a deal here of somewhere in the order of $15 million to $25 million gross, somewhere in that area?

MR. SCHURTMAN: Gross of what, sir? I object to the form of the question.

THE COURT: What do you mean "gross of what?"

MR. SCHURTMAN: I don't know what he is talking about.

THE COURT: Do you understand the question?

THE WITNESS: I understand the question.

THE COURT: Can you answer it? It is a matter of arithmetic. If you multiply three million for $4.98 you will have about $15 million, and if you multiply it by five million,

you would have about $25 million.

What is your question?

Q Is it not true, Mr. Kahl, that in your years with Mr. Levy -- you were with him 10 years first and how many years the second time?

A A little over four years.

Q In your 14 years with Mr. Levy isn't it true that this would have been the biggest deal that Mr. Levy's company had ever had while you were with him?

A In the record business?

Q Yes.

A Over the period of 14 years?

Q Yes, sir.

A Gross?

Q Yes, sir.

A I could not answer that, sir.

Q Do you know of any other deal that was bigger?

A One particular deal?

Q Yes.

A No, I don't know of any particular deal.

Q This was by any standard a memorable and important evening, was it not, in terms of the business potential for Mr. Levy's company?

A I would assume so, yes.

Q And did you, sir, make any notes during the course of that evening of what you heard going on?

A The only notes I made is what I have testified was the titles that they were throwing back and forth that I made notations of. I made no other notes.

Q Which notes are those you made?

A Titles.

Q Are you talking now about an exhibit that you were shown?

A Yes.

Q Which exhibit was that?

A 23.

Q 23?

A This one here.

Q Well, this is a typed copy. I am talking about any sheet of paper with your own handwriting?

A No, I don't have that.

Q But you did make one?

A Yes.

Q And then you threw it away?

A Yes.

THE COURT: Is this the one you thought was on an envelope?

THE WITNESS: That is what I put on an envelope,

your Honor.

Q Other than that, did you make any notes that evening?

A No, sir.

Q Did you thereafter at any time sit down and attempt to re-construct what had been agreed to and various terms that had gone into this deal?

A Mr. Prettyman, I worked for Big Seven. This deal that they were discussing had to do with Adam VIII. I was there because there was a breach of a contract between Big Seven and John Lennon.

Q Yes, sir.

A And it was not necessary for me to make any notations ofbehalf of Big Seven, because I already knew the breach.

Q Well, my question was not whether it was necessary. I simply asked you whether you did?

A I had to explain it in my terms.

Q Now, can you answer the question. Did you thereafter make any memo for the file or notes to yourself or write down anything as to what these terms had been?

A It was not necessary for me to do it, sir.

Q Did you?

A I did not, sir.

THE COURT: The answer is he didn't.

Q Did you know prior to October 8 that any deal regarding a Lennon rock and roll album was to be discussed that evening?

A No, I did not.

Q What percentage of the evening wereyou present? Were you there most of the evening?

A On what date?

Q October 8.

A I would say most of the evening.

Q 80, 90 percent of the evening?

A About 80, 90 percent of the evening.

Q I show you what has been previously received as Defendant's Exhibit CA, which is a rough sketch of the table that evening, and I would like for you to correct in any way that is necessary, Mr. Cahl, the position of the table or the chairs or the alignment of the people who were present.

A This should be faced this way, shouldn't it because that is a booth this way (indicating).

Q You just simply turn the paper to one side?

A You show it to me this way, Mr. Prettyman; you can't describe people this way, because it is not this way; it is a booth. Okay?

Q All right.

A To my best recollection, Mr. Prettyman --

Q Who sat where?

A That is what I am about to testify to. Harold Seider sat here --

THE COURT: The record isn't going to help.

Do you agree with the chart?

THE WITNESS: I don't agree with this.

THE COURT: You don't agree with that chart? Why don't you draw another chart. That is the best way to do it.

THE WITNESS: Why don't you just draw that and I will put the people in.

Q Do you agree, at least, with the formation of the table?

THE WITNESS: Yes.

MR. PRETTYMAN: With your Honor's permission I will draw the same table on here.

THE WITNESS: That is a booth.

5-5 THE COURT: Just let Mr. Prettyman draw and you give him directions.

MR. PRETTYMAN: Is that satisfactory for your purposes?

THE WITNESS: Yes, it is. Mr. Harold Seider sat here (indicating).

Q Is that satisfactory for your purposes, Mr. Kahl?

A Yes, it is. Mr. Harold Seider sat here.

Q Why don't you put the initials right on there so there will be no question about that.

(Pause.)

MR. PRETTYMAN: Your Honor, I will ask that this be marked Defendants' Exhibit CF for identification.

THE COURT: Allright. Does this represent the seating, Mr. Kahl?

THE WITNESS: That I recall, sir.

THE COURT: All right. You want to introduce that?

MR. PRETTYMAN: Yes,sir. I move for its introduction.

THE COURT: Any objection?

MR. SCHURTMAN: Can I see it again?

I would like to ask a question on voir dire. I am not sure I can read this.

VOIR DIRE EXAMINATION

BY MR. SCHURTMAN:

Q Are you saying that May Pang was sitting between Morris Levy and John Lennon?

A It could have been May Pang here. My best

recollection is May Pang sat here --

Q When you say here and here, the record wouldn't show what you mean.

THE COURT: He is saying the seating was as per ghe exhibit.

MR. SCHURTMAN: He is saying that John Lennon and May Pang may have been reversed.

MR. PRETTYMAN: He says it is his best recollection, your Honor.

THE COURT: All right. I have no objection.

THE COURT: I will receive Exhibit CF.

(Defendants' Exhibit CF was received in evidence.)

THE COURT: I guess you did tell the lawyers that believe that perhaps Lennon and Pang were reversed.

THE WITNESS: Reversed, yes.

THE COURT: All right, Mr. Prettyman, go ahead.

BY MR. PRETTYMAN:

Q I believe you said that Mr. Lennon and Mr. Seider arrived early in the evening and that they were there about three hours?

A Yes, sir.

Q How early in the evening was that, do you recall?

A About 8:30.

Q And did they have dinner?

A I don't recollect if they had dinner. They may have had a slight bite later. I know I didn't have dinner and I do not recall if they did or not.

Q Do you recall testifying three times in your deposition, Mr. Kahl, that they did have dinner, that you did nto have dinner but the others did? And I am happy to read this to you unless you have a recollection of it.

A All right.

Q Pardon me?

A Read it.

Q I refer first to page 136 to 137.

THE COURT: When was the deposition taken?

MR. PRETTYMAN: The deposition was taken on July 15th, 1975.

THE COURT: Who was questioning?

MR. BERGEN: I believe I was, your Honor.

THE COURT: Okay.

MR. PRETTYMAN: It had been referred to, your Honor, several times as a dinner meeting and then this question was asked:

"Q Who paid for the dinner?

"A I don't recall who paid for the dinner.

I think Morris Levy paid for the dinner. I am not too sure. I assume it was Morris Levy.

"Q Do you assume that because you have any recollection of his paying for it or is that just an assumption on your part?

"A I assume he paid for the dinner.

"Q You are assuming it?

"A Yes."

Q I never refer you to page 138.

"Q Do you recall whether he paid in cash or whether he signed?

"A I don't know.

"Q Do you recall any dinner attended by Morris Levy at which you saw Mr. Lennon either pay in cash for the dinner or sign for the dinner?

"A I don't recall.

"Q As best you recall in terms of the meeting on October 7th or 8th" -- and I might stop there, your Honor, to say that during the course of the depositions there was some confusion as to whether it was October 7th or 8th and I think that confusion has since been resolved --" did Mr. Lennon pay for that dinner either in cash or otherwise?

"A No.

"Q And you did not pay for the dinner?

"A No.

"Q That would seem to leave Mr. Levy?

"A Yes.

"Q You are saying yes?

"A Yes."

I refer you also to page 141.

"Q Do you know where May Pang ate dinner that evening?

"A I don't recall.

"Q I take it you don't recall whether she came in before or after dinner was concluded by the others?

"A Yes, I don't recall.

"Q I don't know whether you have answered this or not. Did you eat dinner that evening?

"A No, I did not eat dinner. I answered that yesterday."

Do you remember those questions and answers?

A Yes, I do.

Q And is it your testimony now that anybody had dinner that evening other than yourself?

A They may have had a bite there later and I don't consider that not having dinner.

Q And what did they have?

A I don't recall what they had, Mr. Prettyman.

THE COURT: Let's pass that point, Mr. Prettyman.

MR.PRETTYMAN: Yes, I am going on to something else, your Honor.

Q When did Miss Pang join the group, how long after the meeting had started?

A I don't recollect. That may have been a half hour, an hour. I dont remember, sir.

Q Do you recall at what point the conversation was in when she arrived?

A No, I do not.

Q And did she remain for the rest of the evening?

A To my best recollection, she did, yes, sir.

Q And she left with the group?

A To my best recollection, she may -- yes.

Q In other words, she would have overheard whatever happened at the very end of the evening as the group left?

A Yes.

Q She was present?

MR. SCHURTMAN: I am sorry. Could you read back the last question and answer.

THE COURT: Read that back, please.

(Record read.)

MR. SCHURTMAN: I object to the last question and answer. How would she know whether she overheard something

or not.

THE COURT: Overruled.

Q When you saw Mr. Brown, Bernard Brown, the next day, on October 8th, I take it from your testimony that this is the first time you had ever met him?

A On October 9th -- you said October 8th.

Q I am sorry. On October 9th, the day following the October 8th meeting, you said Mr. Brown came to pick you up. Am I to understand that that is the first time you met him?

A To my best recollection, that was the first time I had ever seen Mr. Brown.

Q Do you recall at any time any discussion with Mr. Brown about a watch?

A Yes.

Q Would you tell us what your recollection of that is?

A He admired a digital watch that I was wearing and he asked me if I could get him one. I told him that I knew the senior executive vice president of Benrus Watch and that I would call him and get him the watch and he said he would appreciate it.

Q This occurred where, in your office?

A It may have occurred in the car or it may have

occurred at the Record Plant or it may have occurred in my office.

Q In any event, it was on October 9th that it occurred?

A On October 9th, to my best recollection, yes.

Q Do you recall how long after you had met him on October 9th that he brought up this subject of admiring your watch?

A How what?

Q Do you recall how long after you met him on October 9th that he brought up this subject of admiring your watch?

A I don't recall that. It was some time during that day or the following day or that night. I dont recall when.

Q And did you call the vice president of Benrus?

A I called him.

Q That same day?

A That same day.

Q And did you in fact obtain a watch?

A Yes, I did, sir.

Q What time of day did you call the vice president, do you recall? Would it be late, early?

A When I called him he was not in. I left word with his secretary and he called me back and I told him it

was a very important client from out of the country who admired the watch, "Would you be so kind enough to get me one."

So he said, "I would."

So I don't know how long it took, it may have taken a day or two or three -- he is a brother Friar of mine, which is another club that I belong to.

Q What was his name, by the way?

A Cliff Seigmeister. He is senior executive vice president of Benrus.

Q He is here in New York?

A He is in New York City, yes, sir.

Q You say that the watch was delivered to you within how long?

A I don't know how long, it may have been two days, three days. I don't recall how long. But I called him more than once because I told him the urgency of the watch and that this man was from England.

He said he would deliver the watch to Club Cavallero this one particular night and I said "I'll see you there."

Well, when he arrived I was not there and he left the watch with the maitre D'. When I arrived at the Club I took the watch home with me.

Q Excuse me. Did you --

A I took the watch home.

Q No. I say, did you pay him for it?

A Mr. Seigmeister?

Q Anyone.

A I paid Mr. Seigmeister. Oh, sure. But I did not pay him that night.

Q How much did you pay him?

A Between 150 and $160, sir.

I took the watch home and the next day I brought it into the office and -- I don't recall the date, but Mr. Bernard Brown came to my office and I presented him with the box. He opened the watch.

Q Did it have a Benrus cover on it?

A I didn't look at -- I looked at the watch. The watch that I had on had been a year old. This could have been a newer model. I don't know the model. But he knew the watch I was wearing, Cliff Seigmeister, because he is a friend of mine.

And he reimbursed me for the watch. I think it was about 150 or $160.

Q How much did he give you?

A Between 150 and $160 in cash.

Q This is what Mr. Bernard Brown gave you?

A Right.

Q Did he come to your office because you called him and told him that the watch was there?

A Yes, sir.

Q And did you thereafter send a check to Mr. Seigmeister for the watch?

A I paid Mr. Seigmeister in cash too, sir.

Q You said that Mr. Lennon was -- I am now going back to October 8th, that evening -- that he said in your presence that he was there to find a remedy to cure the breach. I believe those were the words that you used. Did he use those actual words, as best you recall?

A Well in that phrasing. I am not quoting him, but in that phrasing. He was there to cure or remedy the breach of the contract, which he admitted to.

As I understand it, he said that the masters were very good -- I believe those were your words -- of the Spector tapes, but that he had given up any hope of putting out an album with them.

A Right, because he was disillusioned with Phil Spector at that time and he had problems with Phil Spector.

Q Did Mr. Levy or Mr. Lennon first mention the possibility of a TV package?

A It was Mr. Levy who had mentioned it first, sir.

Q And did Mr. Lennon give any indication that he had ever thought of that idea before?

A I don't recall. I don't recall him saying that.

Q Did he seem to be receiving that idea for the first time, as if he had not ever thought of a TV package, or did this seem somewhat familiar with him, did he comment in any way?

A Well, he was familiar with it, because when Morris Levy had asked him if he had seen these type of commercials on TV he had said "They are a pain in the ass. I see them all the time. Some are good and some are bad."

So he evidently was aware of these TV packages.

Q But you recall him saying nothing to the effect that he had already thought of that idea as a possibility for this album?

A At what time of the evening are you talking about?

Q Any time of the evening.

A Later on in the evening he thought it was a great idea, he was very enthusiastic about it.

Q No. I think perhaps you haven't understood my question.

Did he give any indication that prior to this

suggestion by Mr. Levy he had already thought of the idea of putting this album out by way of a TV package?

A I wouldn't know what John Lennon thinks. He didn't say anything to me about it.

Q He didn't say anything in your presence?

A To me, not to me.

THE COURT: Let us take our lunch break.

(Luncheon recess.)

AFTERNOON SESSION ----- 2:15 P. M.

P H I L I P K O L S K Y, resumed.

CROSS-EXAMINATION (CONTINUED)

BY MR. PRETTYMAN:

Q Was EMI mentioned at any time during the evening of October 8?

A Yes, John Lennon had mentioned EMI in reference to there was a new contract coming and when they were discussing the TV package, that Capitol had no rights for TV for the United States, and then when in discussing about the European market he said, "There would be no problem because I am re-negotiating a new deal with EMI.

Q I refer you to your deposition, page 50, where the question was asked:

"Q Do you recall EMI being discussed at any time during this meeting?"

That is, referring to the meeting of October 8.

"A No, I don't recall that."

And then again on page 111 after you had referred to Capitol:

"Q Did he say the same thing about EMI?

"A I answered the question.

"Q No, no, you have not answered that question.

"A We didn't discuss EMI."

Do you recall those answers?

A I may have made those answers, yes, I recall them, but then I have read my deposition and I started recalling other things that happened during that night.

Q Were you prepared by your attorneys for this deposition?

A Yes, I was.

Q Was Mr. Wood --

MR. SCHURTMAN: I object to the last question. What does he mean by prepared for the deposition.

THE COURT: Well, he answered it. He said he was prepared by his attorney.

MR. SCHURTMAN: I object to the form.

THE COURT: It is a little late and it has been answered. Overruled.

Q Was Mr. Wood discussed during the meeting of October 8?

A I do not recollect that.

Q You don't recollect his being mentioned at all?

A No.

Q Do you recollect anything about Mr. Levy saying to Mr. Seider, "When are you going to get on a plane and see Mr. Wood?" Do you recall anything like that?

A No, I don't recall that.

Q Do you know who Mr. Wood was?

A Yes.

Q Do you know he is connected with EMI?

A I do, sir.

Q Was there any discussion about EMI receiving anything from this deal?

A I don't recollect that, sir.

Q Do you recall Mr. Lennon or Mr. Seider saying they would have to get EMI's permission before they could give any rights to Mr. Levy or his company?

A Mr. Lennon said he did not have to discuss it with EMI and that Capitol had no rights in the United States for TV.

Q I refer you to your deposition at page 168:

"Q I believe you just testified that Mr. Lennon at the October 7 or 8 meeting ever said contrary to his own testimony that he needed the permission of EMI or Capitol, he never said that during the meeting? Am I correct.

"A Correct.

"Q What I am asking you is whether Mr. Seider at that same meeting made the statement that either EMI's or Capitol's permission had to be obtained?

"A They never said that.

"Q Neither Mr.Seider nor Mr. Lennon said that?

"A Right."

Do you remember that testimony?

A I remember that testimony, but I also remember that Mr. Lennon did say that he did not have to get permission from Capitol Records to put a TV package out.

Q But nothing was said about getting permission from EMI?

A I don't recollect.

Q Now, in regard to that testimony about Mr. Lennon saying that Capitol Records does not have any TV rights to any deal, how did that come up precisely? In what form did that come up? Did he offer it or was he asked that? Recall for us as best you can how that came about.

A My best recollection was when Mr. Levy was discussing the TV package and was asking John Lennon if he had seen these commercials at the time on the air he was very aware of it and later on in a conversation Mr. Lennon had said, my best recollection, that Capitol did not have TV rights in the United States.

Q In other words, he was not asked about that? He just volunteered that?

A To the best of my knowledge I think he may have volunteered that, yes,sir.

Q And did you or Mr. Levy ask him what Capitol had

to do with this when he volunteered that information?

A I don't recollect that.

Q Was there any discussion at that point about precisely what rights Capitol might have had or not had?

A I don't recall.

Q Was there any discussion about any licensing or agreements or deals that Mr. Lennon had with Capitol?

A I don't recall that, sir.

Q Was anything said about Mr. Lennon being under exclusive contract with either Capitol or EMI?

A I don't recollect that.

Q You don't recall Mr. Levy asking any questions about that?

A They were discussing the TV rights that Lennon had mentioned that Capitol did not have.

Q My question is, did Mr. Levy ask any questions about that, what the precise situation might be with Capitol?

A I don't recollect that, sir.

Q Did you?

A No, I did not.

Q You said in the discussion about royalties that someone said the royalty would be 12 percent. Do you recall who said that? Who first mentioned 12 percent?

A It was either Mr. Seider or Mr. Lennon.

Q But you don't recall who?

A I don't recall who it was.

Q What was the question that was asked that that answer was given to?

A Mr. Levy addressed to Mr. Seider or Mr. Lennon what was Mr. Lennon's royalty, and either Mr. Lennon or Mr. Seider 12 percent.

Q Did they say 12 percent of what?

A No.

Q Did they say what the royalty would be outside the United States?

A I don't recall that.

Q There was no discussion of that, was there?

A I don't recall.

Q And did they say whether that royalty would be based on the United States sales or overseas sales?

A They were discussing United States sales and 12 percent would be on the retail price.

Q There was no discussion in regard to what his royalty would be outside the United States?

A To the best of my knowledge, no.

Q Or what it might be based on outside the United States?

A No.

Q Who brought up the question of price?

A Repeat the question in more detail. Whatprice?

Q Who brought up the question of what the price of the album was going to be?

A I think to my best recollection Morris Levy brought up the price of $4.95 or $4.98. He was addressing himself to Mr. Lennon and Mr. Seider. It was either Mr. Seider or Mr. Lennon said that, "This is too cheap; it should be $6.95 or $7.95."

Q How was the issue of whether it was going to be $4.98 or $4.95 resolved?

A It was only going to be 15 sides or 16 sides total album and it was a one record album and Mr. Levy said, "We have to give the customers a good buy."

1-2 Q I apologize. My question was not quite clear. You mentioned the fact that the price was going to be eithe $4.95 or $4.98, and apparently it was resolved one way or the other. Can you tell us how that was resolved as to which of those prices it would be?

A Morris Levy gave his opinion to Mr. Lennon and Mr. Seider and they agreed.

Q That it would be --

A Between $4.95 and $4.98 total album, or $5.98 or $6.98 for the 8-track.

Q That was how the matter was finally resolved?

A Yes.

Q That be a world wide price?

A I don't recall that.

Q Was there any discussion about the price outside the United States?

A I don't recollect that.

Q Now, was that going to be a price that related when sold through retail fulfillment centers or sold solely over TV without retail fulfillment centers? What was this price related to?

A As I testified before, Mr. Prettyman, I am not too familiar with the Adam VIII operation and placement centers. All I had heard was it was a TV package and that this TV package would be a mail order at $4.98. This is the only part I really understood.

Q I didn't imply in my question that you should have this information. I am just trying to get your best recollection. Have you told us as well as you remember everything that was said about the price?

A To the best of my knowledge, yes.

Q I believe you said that the agreement as you understood it was that Mr. Lennon through his 12 percent was going to take care of Mr. Spector, is that right?

A That is correct, sir.

Q Did that taking care of Mr. Spector relate solely to the 3 percent which you have referred to or does it also include the recording costs that went in the Spector tapes?

A I don't recall that at all. I only knew about the 3 percent of him being a producer of this album.

Q Was anything said about who was going to pay the costs of getting the Spector tapes back?

A There was discussion, but I don't recollect what it was. I knew they had difficulty getting it back, but they had to pay for it to get it back.

Q Any figures mentioned?

A Roughly, as I said in my testimony, between 80 and $100,000. I don't know the exact figure.

Q But you don't know who was going to pay for that?

A No, I did not.

Q I think you did testify, however, that Mr. Levy agreed that he was going to pay for advertising and packaging and mail orders and various costs of that sort. Did I under-

stand you correctly on that?

A Yes, sir.

Q He was going to take care of all other costs beside the Spector costs, is that right?

A Yes, sir.

Q And you overheard that at the meeting, you overheard Mr. Levy agree to assume all of those costs?

A To my best recollection, yes.

Q Do you remember just how that was put, what he said?

A Not -- I couldn't remember.

Q I refer you, sir, to, first of all, pages 48 and 49 of your deposition:

"Q Was there any discussion about how much money would be spent on advertising the album?

"A I don't recall. You are talking about the 6th and 7th and 8th?

"Q Yes.

"A I don't recall."

Then on page 51:

"Q Was there any discussion about who would pay the recording costs for the album?

"A There was no discussion.

"Q Was there any discussion about who would pay the

recording costs for the Spector tapes?

"A There was no discussion about Spector tapes regarding the cost or the payment."

I refer you, sir --

A May I answer that?

Q I am sorry. I didn't know you were about to speak. Go ahead.

A Would you read back that last part, please?

Q Sure.

A About Spector costs?

Q Why don't I read each question and answer, so you will have it all.

A Would you, please.

"Q Was there any discussion about who would pay the recording costs for the album?

"A There was no discussion.

"Q Was there any discussion about who would pay the recording costs for the Spector tapes?

"A There was no discussion about Spector tapes regarding the cost or the payment."

I was going to go on and read, but did you want to say something there?

A There was discussion about them getting back the Spector tapes and there was discussion about moneys, but

it was not a discussion in relationship to the deposition.

THE COURT: I think that is clear.

THE WITNESS: Thank you.

THE COURT: Go ahead, Mr. Prettyman.

Q Page 133 to 134:

"Q No, my question was quite specific, Mr. Kahl. It related to an amount to be spent for television advertising.

"A I don't recall."

Finally, on page 149 and 150:

"Q Did you ever overhear a discussion at any time about"-- excuse me. Let me stop and ask you a question before I read that.

Did you overhear any discussion on the evening of October 8th in regard to what Mr. Levy's profit would be on this album?

A No, I do not recollect that at all.

Q You don't remember that being mentioned at all?

A No, I don't recollect.

Q Was there any discussion of a guaranteed minimum for either Lennor or Apple in this deal?

A There was no discussion.

Q Was there any discussion of exclusivity, that is,

Mr. Levy getting the album on an exclusive basis from Mr. Lennon?

A To my best recollection, there was no discussion.

Q No discussion. You don't remember exclusivity or getting an exclusive contract being mentioned?

A No, I don't believe so.

Q I am unclear about retail fulfillment centers, Mr. Kahl. I understand that that is not your end of the business and that you are not familiar with them, but do you recall them being mentioned or discussed at all during that evening?

A When they -- if they mentioned it, I tuned off, because I knew nothing about it and it didn't interest me.

Q I amnot asking you to tell us what they said. I am just asking you whether retail fulfillment centers were mentioned at all, to the best of your recollection.

A They may have, yes, sir.

Q Theymay have, but what is your recollection, sir? Did they or did they not?

A To my best recollection, I think they did, sir.

Q Pardon me?

A They did.

Q Did?

A Did.

Q Page 107.

THE COURT: This is the deposition, right?

MR. PRETTYMAN: Of the deposition.

Q We were talking about price there.

"Q There was no discussion of the same album then going into retail fulfillment centers, where a prospective customer could walk in off the street and purchase that same album?

"A No discussion at all, no.

"Q As a matter of fact, retail fulfillment centers weren't mentioned?

"A As I mentioned, it was strictly for TV.

"Q My question is were retail fulfillment centers discussed during that meeting.

"A I don't recall. It was strictly for TV. I do recall it was strictly Morris Levy saying that it was for TV."

Does that refresh your recollection?

A It does, but I have an answer for that.

Q Sure.

A When they said placement centers and all that they -- I got tuned off, and so if I did answer I did not

hear it or heard it, it didn't mean anything to me, because my main concern being there was that I heard that John Lennon had given or was giving Morris Levy the rights for a TV package, and I being there on behalf of Big Seven was listening to most of this conversation and when I got -- and when I was cross examined, the deposition, I had two, three lawyers there doing this examination, I am not used to this type of -- I have never been in court in my life.

Q You don't mean two or three were examining you at once, do you?

A Not all at once, no, not all at once.

Q Let us get to something now that you did discuss during this meeting. I believe you said that you explained to everyone why the settlement in the copyright dispute was worth more than $200,000. I want you to tell us, sir, in as precise terms as you can recall exactly what you said, how you broke it down, and explain exactly why that was worth over $200,000.

A The fact that John Lennon would record three songs in an album, it meant that over a period of years there would be many cover records --

Q Many what?

A Cover records. -- and the mechanical royalties and the performance money, sheet music, orchestrations,

educational orchestrations, colleges, high school orchestrations, over a period of years would bring in much more than $200,000.

THE COURT: Are you saying that the fact that Mr. Lennon would record these songs would enhance their popularity?

THE WITNESS: Popularity to other --

THE COURT: So that you would get more people who wanted to license them to do their own records?

THE WITNESS: Yes, your Honor.

THE COURT: And in foreign languages?

THE WITNESS: Yes, your Honor.

THE COURT: And sheet music, sell more sheet music, all that, right?

THE WITNESS: Records, performances all over the world, all the other societies.

THE COURT: What is meant by cover records?

THE WITNESS: Cover records is when another artist records the same title of another artist's song. There are many songs of the Beatles or John Lennon or George Harris of the Beatles that have been recorded by other artists.

Q I take it this would be true of any well selling album that you had of a performer, would it not, in other

words, that any album that you put out of a particular artist would result in increased, for example, sheet music sales of the particular songs that were done?

A Not every artist, Mr. Prettyman, not every artist. An artist of John Lennon's stature, yes.

Q But no other artist?

A Other artists, artists like Frank Sinatra.

Q Any artists that you have had before, that Mr. Levy's companies have had?

A Yes. I have had artists or songs of Big Seven, as I expressed myself in my testimony earlier.

Q So that your experience is that the production of such an album has in fact resulted in increased sales from sheet music where other artists have performed for --

A Not only sheet music, Mr. Prettyman; cover records, performances, mechanical royalties.

Q All right.

I show you, Mr. Kahl, what has been marked Defendants' Exhibit CG for identification, which was produced from the plaintiffs' files by subpoena, and it is entitled "Big Seven Music Corp., Trial Balance for Year Enging 6-30-75," and I call your attention to total sheet music sales for that year, $788.63.

Do you see that figure?

THE COURT: What company is that?

MR. PRETTYMAN: Big Seven.

THE COURT: Year ending what, Mr. Prettyman?

MR. PRETTYMAN: June 30, 1975.

A I could answer that, Mr. Prettyman, in a very simple manner.

In the year 1955 I had a song called The Yellow Rose of Texas as recorded by Mitch Miller and have had numerous rerecordings of this song all over the world in various languages. In America alone we sold over 800,000 copies of piano sheet music, orchestrations by the thousands. This may have been a lean year. And that is not a true figure, because we have hundred percent holding corporations in Europe and they retain 50 percent of some of this income over there.

Q You are not saying this figure isn't accurate for what --

A It is accurate for what is here in America, yes.

Q What would you estimate that the figure would be in the rest of the world?

A I remember having a song called Why Do Fools Fall In Love selling 400,000 copies of sheet music.

Q My question, Mr. Kahl, is for this same period of time what would you estimate that your sheet music sales

would bring in over the rest of the world?

A If John Lennon had recorded these three songs?

Q No, for this same period without Mr. Lennon.

A I couldn't give you that estimate, because at any given day somebody may record one of these titles and enhance the sheet music of many of these titles and the gross could double, triple, quadruple, go into the thousands.

I sublicense my printing to a company called Big III. They guarantee me X amount of dollars for the year for the rights of use of my printing.

Q Would the figure be larger or smaller than $788.63?

A It all depends on the type of recordings I would get that year.

MR. PRETTYMAN: I move this in evidence, your Honor.

THE COURT: Any objection?

MR. SCHURTMAN: I have no objection to the exhibit being admitted.

THE COURT: All right. It is received.

(Defendants' Exhivit CG was received in evidence.)

Q Mr. Kahl, you are aware, are you not, that this period covered by this exhibit includes five months of

the year when two of the songs owned by Big Seven came out on Capitol's Rock and Roll album.

THE COURT: What is that?

(Question read.)

A Yes.

Q Did you explain to the people at the October 8th meeting how this $200,000 was to be broken down as between, for example, colleges and education classes and sheet music and things of this sort?

A Mr. Prettyman, I didn't explain it that way.

Q You just gave them the broad figure?

A I gave them a general idea, and I am pretty sure that Mr. Lennon and Mr. Seider understood me very clearly. Mr. Lennon owns publishing companies and he belongs to socieites as a composer and author. So he was aware of what I was talking about with his knowledge as a music man.

Q Was Miss Pang present when you made this explanation?

A I don't recollect if she was or not.

Q Did you mention this discussion anywhere in your deposition?

A Yes, I remember doing that.

Q Oh, you do?

A I think I do. That it would enhance the catalog.

Q Pardon me?

A That it would enhance the catalog.

MR. SCHURTMAN: Would you like me read you the testimony, Mr. Prettyman.

MR. PRETTYMAN: Not unless you have your redirect.

Q When Mr. Lennon asked Mr. Levy to come to the Record Plant the next day did he explain why he wanted him to come to the Record Plant?

A He wanted him to listen to the Phil Spector tapes.

Q And did he say why hw wanted him to listen to the Spector tapes?

A As I testified this morning, because he respected Mr. Levy's background in the music business, he wanted him to hear it to see if some of these tapes could be salvaged.

Q Did he in fact say he wanted him to hear it so as Mr. Levy would make sure that he knew that Mr. Lennon's explanation about the Spector tapes was in fact true, that he had attempted to --

A Would you repeat that question, Mr. Prettyman?

Q Yes. Let me state it in a different way.

A No, don't state it in a different way. I would like to hear it the way you asked me.

Q All right.

THE COURT: Mr. Reporter.

(Question read.)

A Attempted to what?

Q [illegible] had attempted to put the requisite number of songs on the Spector tapes. Did he give that explanation for asking Mr. Levy to come by to listen to the tapes?

A He merely told Mr. Levy to come by to listen to the tapes to see how many tapes can be salvaged.

Q Mr. Kahl, was it your understanding after the evening was over and based upon your understanding of the agreement that you say was reached that the deal was for worldwide rights to the Lennon album?

A At that time it was not for worldwide rights, it was for the American rights, at that time because --

Q Just for the American rights?

A Right.

Q And Mr. Lennon had agreed just for America?

A At that time.

Q Oh, and then he later agreed to something else?

A I don't recall. They have had other meetings, Morris Levy and Mr. Lennon, and Mr. Seider and Mr. Graham

and Mr. Levy.

Q Why was it that no agreement was reached in regard to worldwide rights?

A There were meetings between Mr. Seider and Mr. Levy and Mr. Graham pertaining to --

Q To obtain what?

A To get the foreign rights or go partnership with the foreign rights.

Q And how would they get them? Who would they get them from?

Q They would have to get them from the European company.

Q From what?

A The European company, EMI.

Q And this was discussed on the evening of October 8th?

A No, sir.

Q I am somewhat confused.

I meant to ask you on the evening of October 8th what was the conversation about that led you to understand that the deal was restricted to the United States.

A It was restricted to the United States until Lennon -- John Lennon at that time said, and I testified that, this is the first time I am saying it, that he

would have no problem for Europena rights, that a contract was coming up to renegotiate.

Q Contract between whom?

A Between EMI and John Lennon.

Q Then EMI was mentioned that evening?

A Well, I testified that this morning.

Q And therefore he felt he would have no problem --

A I sometimes feel, Mr. Prettyman, that you are misleading my -- rephrasing questions.

Q I certainly don't do it on purpose.

A I know you don't, but I also get confused, and I don't mean to be.

Q I certainly don't mean to mislead you.

A Thank you.

Q In any event, it is now your recollection that Mr. Lennon said he would have no problem getting permission because his contract was coming up?

A To renegotiate . He was renegotiating a new contract.

Q I take it from what you testified about retail fulfillment centers that if any distinction was made in the United States between TV and retail fulfillment centers you didn't get that, you didn't hear it?

A I didn't understand it in full. I merely

understood the part of the TV mail order.

Q Was anything said about the number of TV stations that this was going to come out over?

A I don't recall that, no, sir.

Q Anything said about the number of cities that it was going to come out in?

A Not the amount. I don't recall that either.

Q The number.

A No, I don't recall that.

Q Anything said about certain areas of the country that it would come out in?

A I vaguely remember that it would come out in all areas, but I don't recall how many cities, what it was.

Q Was there any discussion about licensing companies outside the United States to sell and distribute the album?

A I don't recollect that, sir.

Q Or about who might handle the album outside the United States?

A There may have been some discussion, but I don't recollect that, sir.

Q Would you tell us the best you remember the discussion about how long it would take to sell the 3 to 5 million albums, if there was any such discussion?

A I don't recollect that. But I do remember part of it saying something like when it is a TV package they complete them somewhere around 16, 18, 20 weeks, something like that, to that figure.

Q Does that mean that the 3 to 5 million are going to be sold in that amount of time?

A No. The 3 to 5 million, which I testified earlier, was going to be all over the world.

Q How was that broken down between --

A I don't recollect how it was broken down, sir.

Q I believe you testified about a discussion concerning the number of songs that would go into the album.

Was there any actual final agreement that evening, October 8th, as to how many songs would be in the album?

A 15 or 16, sir.

Q Was there any discussion that evening about the efforts that had been made by anyone to retrieve the Spector tapes?

A There was some discussion at the beginning, when I sat down, about the problem they were having with Phil Spector and that they were trying to get the Spector tapes back, John Lennon or Capitol, and by that time, that meeting of October 8th, he already had in his possession the

Spector tapes.

Q And was it explained that Capitol had been instrumental in getting those tapes back?

A I think so.

To my best recollection, I think it may have been, yes, sir.

(Continued on next page.)

THE COURT: I think that I have harped on this before, but put yourself in my position. We have witnesses who have stated different stories. Mr.Levy's version and Mr. Kahl's version is radically different than the version of the defense witnesses have so far testified. Now, I would not have too much hope that a cross-examiner could get Mr. Levy or Mr. Kahl or Mr. Seider or Mr. Lennon to just change their version. Their versions are in, and I have got to determine which is right, or if the plaintiff has borne the burden of proof. Now, on cross if there is a significant difference in a deposition statement from what he has testified here, certainly,you should bring that out. If there is some significant thing that he has omitted to testify to, or not been asked about that you want to supplement, bring that out. But there is very little of this that is that kind of significant thing that helps me very much. We could go on and on having a little questions about how did it come up and this and that. A lot of it is repetitious. And I really find that this is true of a lot of cross-examination in a lot of cases. I am not getting much out of this. And I would appreciate if you could limit your cross-examination to significant differences in his prior statements, significant things that have not been covered, and let us let him go and get on with the next witness.

MR. PRETTYMAN: I will simply say in response that the great disparity between the stories is not simply between the plaintiffs' version and the defendants' version, but between the only two witnesses who represented the plaintiff at that meeting, namely, Mr. Kahl and Mr. Levy. I realize it is difficult to pick up the disparties and discrepancies as they come out point by point, but I think you will find when the record is completed that Mr. Kahl's story is completely different from Mr. Levy's, and in light of that it is important for me to bring up each subject that Mr. Levy discussed in order to find out if Mr. Kahl has a recollection of it, even if there is no difference between what Mr.Kahl says now and what he said in his deposition.

THE COURT: Anything that does not cover that you want to ask about, yes. What I am getting at, Mr. Prettyman, is there is a fair amount of repetition here, and it is so with all the lawyers. You are asking things and he is saying, "I said it on direct," and he did. If there is something that Mr. Schurtman just did not ask him, subjects that were not asked, of course, you should ask him that. But let us avoid the kind of questioning where he will just say, "Mr. Prettyman, I told you about this three times already," and a lot of times he had.

MR. PRETTYMAN: I am sorry, your Honor, and I

apologize if I am doing that. I am not doing that on purpose. Sometimes his answer is repetitive, but it is not necessarily response to the question.

Q I believe you mentioned the fact that Mr. Lennon on that evening, October 8, mentioned a particular German photographer? Is that correct?

A He mentioned that to me briefly, that he knew a German photographer that had a certain picture, one or more than one, of his. I testified to that this morning.

Q Was that viewed on the album roots?

A No.

Q Was any discussion about the jacket of the proposed album that evening?

A Not to my recollection.

Q Was there anything said about Mr. Lennon having to approve that album jacket cover before anything was actually produced?

A Not to my recollection, no, sir.

Q Was there discussion of the title of the proposed album?

A There was a brief discussion. I think it was at the first or it may have been the second meeting. I think it was at the first, that Morris Levy had mentioned roots.

Q But let us pin that down, if we can.

A Morris Levy had mentioned either at the first meeting, or the meeting following -- that would be around the 14th -- of calling it roots.

Q Can you recall, Mr. Kahl, which of those two evenings that the roots title was mentioned?

A I can recall, I think in my deposition I said it was the 9th or the 8th.

Q Is that your best recollection?

A Yes.

Q Do you recall what Mr. Lennon's response to that title was?

A It was insignificant at that time because we got into another matter.

Q Do you know to your personal knowledge whether Mr. Lennon was, in fact, ever consulted about the title to the album before it was released?

A I don't recollect. I was not involved.

Q Was there any discussion at the October 8 meeting about Mr. Lennon giving his permission through the use of his name and likeness in connection with the sale and distribution of the roots album?

A I assume when John Lennon spoke to Mr. Levy and Mr. Seider and got enthusiastic about this TV package and was willing to give him this package to cure the breach

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as I described before, there had to be a discussion.

Q There had to be a discussion?

A Yes.

Q Did you hear it?

A I heard part of it, sir.

Q What was said? I don't want you to repeat your direct testimony.

A Repeat your question again?

Q Is there something new that you remember that Mr. Lennon was giving permission for the use of his name and likeness in connection with the proposed album?

A I don't recollect, sir.

Q Was there any discussion at all about Apple Records?

A Is that a question, sir?

Q Yes, sir, on the evening of October 8 was there any discussion at all about Apple Records?

A It was partially John Lennon and Apple Records that breached the contract with Big Seven.

Q And so Apple Records was mentioned?

A The documents have it. It is a paper.

Q No, no, I am talking about the discussion that evening.

A Was Apple Records mentioned?

Q Yes.

A I don't recall.

Q Was there any discussion about reducing the deal to writing?

A My best recollection when they got up Morris Levy had mentioned something to Harold Seider, some reference to a contract or words similar to that. He said, "We will get to that later."

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THE COURT: Who said that?

THE WITNESS: Harold Seider.

THE COURT: What did Levy say about a writing?

THE WITNESS: Levy said to Harold Seider, "Let's get together on this and get it down into -- " I don't know the exact words, your Honor. -- he didn't use "contract" -- into writing, and Harold said, "We will get to that later, don't worry, Morris."

Q I refer you to page 134 of your deposition:

"Q Was there any discussion in that meeting about reducing the deal to writing?

"A Reducing the deal --

"Q Specifying in writing at any time thereafter what the deal or agreement was in regard to the proposed album?

"A I don't recall that."

A That was when I was sitting there, but I remember later on when we all got up, when they were walking out of the club, that Morris had mentioned that to Mr. Seider.

Q Did you interpret these questions in the deposition to refer only to when you were sitting down.

MR. SCHURTMAN: I object.

THE COURT: Overruled.

THE WITNESS: Would you repeat your question.

Q I say, did you interpret these questions during the deposition to refer to what was said only when you were sitting down?

A When they were standing up and leaving the club and John Lennon had shook hands, there was a discussion. I overheard Morris Levy saying to Harold Seider, "We got to get together on this and get it into writing." He said, "Don't worry about it, Morris, we will do that later on."

MR. PRETTYMAN: The question has been answered, the point has been made; and I will move on.

MR. SCHURTMAN: I object to the editorializing. I have not done it and Mr. Prettyman should not do it.

THE COURT: It is of no consequence.

Q And did Mr. Lennon tell you at any time that Apple had no TV rights in his product?

A He said that Capitol had no TV rights in his

his products.

Q Didn't say that about Apple?

A I don't recall.

Q I refer you to page 192:

"Q Did Mr. Lennon ever mention at any time that he was acting on behalf of Apple Record, Inc.?

"A Lennon said that Apple or EMI or Capitol did not have any TV rights to his product.

"Q So your testimony now is Mr. Lennon stated that Apple Records Inc. had no television rights in his performance.

"A Yes."

THE WITNESS: I want you to continue that deposition, because I changed my mind in that deposition, at a further place.

Q Do you want me to keep reading?

A I wish you would.

Q "Q Did Mr. Lennon ever state that he could bind Apple Records without approval.

"A Did Mr. Lennon say what?

"Q Did Mr. Lennon ever say that he could bind Apple Records without anyone's approval?

"A I don't recall."

How long do you want me to continue?

THE WITNESS: I want you to continue reading.

MR. PRETTYMAN: Did you want me to read something?

MR. SCHURTMAN: On the bottom of page 199, your question and then the witness' answer.

BY MR. PRETTYMAN:

Q "Q You had previously referred Mr. Lennon's statement that Capitol never had any TV rights in his album, but in answer to Mr. McHugh's question, you said that Lennon stated that Apple, EMI and Capitol never had any TV rights in his album. Where and when did he make that statement?

"A The 7th and 8th.

"Q And he specifically included all three?

"A Well, he specifically included -- no one had TV rights.

"Q Let's get this down quite specifically, Mr. Kahl.

"There is a difference between his saying no one and his naming particular people. Give us your best recollection at this time as to precisely what Mr. Lennon said about people not having TV rights in his album, as precisely as you can.

"A To the best of my knowledge, he had said, as I said before, that Capitol and EMI had no TV rights to his contract."

Do you want me to continue?

THE WITNESS: No, that answers my question, because you kept questioning me, with the attorneys. The questions were re-phrased and I came to that answer. That was the answer.

MR. PRETTYMAN: Mr. Kenzer interjected, and I made a statement, and at the top of the next page:

"Q Did he or did he not mention Apple?

"A I don't recall."

BY MR. PRETTYMAN:

Q Now, you refer to the fact that a few days after the October 8 meeting you began contacting some publishers rates?

A That is right, sir.

Q And how did you contact them?

A May I look at this document, exhibit 23?

Q Yes.

A I would say approximately 2 or 3, maybe 4, and then I was instructed to stop, because Mr. Lennon had not chosen the songs that he would be doing for this TV package.

Q Is it not a fact, Mr. Kahl, when Mr. Lennon found out you were contacting publishers he told you to stop doing it?

A No, both Mr. Morris Levy and John Lennon thought

it would be wise not to. When I spoke to a publisher I never mentioned John Lennon was doing an album. It was just for a TV package. And they decided to wait until Mr. Lennon had chosen the songs.

Q My question is, didn't Mr. Lennon stop you?

A I don't recall if Mr.Lennon stopped me. I think it was decided between Mr. Morris Levy and Mr. John Lennon.

Q I refer you to page 201 of your deposition:

"Q At some point, Mr. Lennon stopped you and said that you should only contact the royalty owners after he had selected the songs.

"A Yes."

A That is what I just said.

Q I asked you specifically --

THE COURT: You don't need to argue. I have the record.

Q Were you ever instructed --

MR. SCHURTMAN: Could you just read 204 also to complete it, his answer at the top of the page?

MR. PRETTYMAN: "A Mr. Lennon and Mr. Levy suggested it, that we stop until he would decide."

MR. SCHURTMAN: Thank you.

Q Were you ever instructed to begin again, Mr. Kahl?

A No, sir.

Q Going to the meeting with Mr. Graham, I believe you testified that you were at part of that meeting and that Mr. Seider and Mr. Graham were questioning Mr. Levy in regard to he Lennon package and what they would have to spend on TV. You recall that?

A I wasn't at most of that meeting, but what they were discussing at that meeting was to consummate a foreign deal, a co-partnership, if it couldbe worked out between between EMI and Adam VIII, and they went through numbers.

It was unimportant to me. I had gotten a few phone calls. There were some hors d'oeuvres on the table. I had a drink. I walked away.

I found that I was not qualified even to listen to this type of conversation because it meant nothing to me as far as Adam VIII was concerned because it had nothing to do with my sitting there at all. Graham was there, Seider, and Mr. Lennon and Mr. Levy, and they were writing figures on papers, what it would cost. He was being questioned, how this would be broken up, some kind of a deal made in Europe.

Q But you do recall some talk about a joint

venture?

A Yes. The joint venture was for Europe.

Q Did you ever mention that during your deposition?

A I don't recollect.

MR. SCHURTMAN: I object to the form of the question.

MR. PRETTYMAN: I will retract the question so that you won't have to object to it.

Q Let me refer you, sir, to pages 79 to 81 of your deposition:

"Q Can you tell us who was present at that ime?"

And this was the Graham meeting.

"A Another gentleman.

"Q Was this Michael Graham?

"A Could have been. I don't recall the name.

"Q Was this a gentleman who was with Mr. Seider?

"A Yes.

"Q Was Mr. Levy there also?

"A Yes.

"Q Were you present during the entire time they were there?

"A Not the entire time.

"Q Do you recall what the substance of the discussion was?

"A Again, royalties.

"Q Can you tell us what about royalties?

"A I wasn't there for that length of time because I sat down for something and had to leave and come back and forth.

"Q Do you recall anything that was discussed?

"A Royalties.

"Q Can you be a little more specific as to about royalties?

"A What John Lennon would get, what the publisher would get, what was happening. I don't even know if that name was familiar to me, Graham. There was another man with Seider. I don't recall his name. I did not attend that meeting in its entirety. I was up and down.

"Q Do you recall anything being discussed while you were there about what was going to be spent on advertising for this album?

" A No, I don't recall that at all.

" Q Do you recall anything being discussed about what was going to be spent for packaging costs for the album?

"A No, I don't recall that.

"Q Was there any discussion about what Mr. Lennon's royalty would be at the time you were there?

"A They discussed royalty, but see, I don't know anything, I am not involved in Adam VIII, so when they discussed -- when you asked me a question about placement centers, I really am not too familiar with that, but I do know they discussed royalties. If that is a for royalty, they discussed it. I do know that they discussed copyrights and royalties to the artist which I understand. This is at the earlier meet. r. Also probably at any meeting where they discussed royalties. When you talk about placement center, I don't know what that means. I know it has a meaning, but I am not familiar with it as a musician.

"Q I am talking specifically about this meeting that we are talking about now where Mr. Seider and Mr. Levy and some other gentlemen were at. Do you recall anything specifically being discussed about royalties?

"A Nothing specific."

Do you recall any testimony which you gave at your deposition in addition to that that related to the discussion there and in particular about joint ventures?

A As I said in my testimony a minute ago --

Q I don't want you to repeat now, Mr. Kahl.

MR. SCHURTMAN: Let him answer the question, please.

THE COURT: You know, this is impossible.

Who memorizes their whole deposition and is able to quote this? I don't see what we are accomplishing at this particular moment.

MR.PRETTYMAN: I will then retreat, your Honor, and go to something else.

THE COURT: Okay.

Q Was Mr. Garlick at the farm, Mr. Kahl?

A On what date, sir?

Q Do you remember the rehearsals at the farm? On any of the dates at the farm.

A On any of the dates?

THE COURT: The rehearsal trip to the farm.

A I don't recall. I don't recollect him being there, no.

Q You do not recall him being there?

A I don't recall. He may have been there, he may not have been there. I don't recollect. They were comingin and out. I was working very close with May Pang and John Lennon.

THE COURT: All right. You just don't recall whether he was there. All right. Next question.

Q I refer you to page 74 of your deposition, where we were talking about who was at the farm and you were listing people and you mentioned Mr. Garlick, and then I say

to you:

"Q You say Mr. Garlick was there?

"A He was there.

"Q This is Lew Garlick?

"A Yes."

Sir, also at the farm, just prior to going to the farm, you indicated that Mr. Levy had told Mr. Lennon that he should come to the farm because there wouldn't be such a waste of time in the studio and things of this sort.

Did Mr. Levy present the reasons to Mr. Lennon why Mr. Lennon should come to the farm?

A He explained that the musicians would be confined to the house, that when he would call rehearsals they would be there.

THE COURT: Who was saying this, Mr. Levy or Mr. Lennon?

THE WITNESS: Mr. Levy was telling this to Mr. Lennon, your Honor. I have testified thit this morning. And that it would be more comfortable and relaxing for him to be there than be in to a studio, where he would have to be looking for musicians, they may be coming in late. This was the manner that Mr. Levy spoke to Mr. Lennon and Lennon accepted the invitation.

Q I am just trying to get straight that that was

not Mr. Lennon giving reasons why they should come, that was Mr. Levy giving reasons why Mr. Lennon should come to the farm?

A To the best of my recollection, yes.

Q Just so that I understand this -- I am showing you Plaintiffs' Exhibit 24 -- was the purpose of this list so that at the rehearsals at the farm the sheet music and records and so forth would be present so that the musicians could rehearse? Was that the purpose of this list?

A That is correct, sir.

Q You mentioned the fact that you had added Ya Ya to that list because you knew that it was in the can but that you hadn't discussed that with Mr. Levy or Mr. Lennon. How did you find out that that was in the can?

A Walls and Bridges.

Q You mean it had been recorded?

A That's why -- but that was a satire.

THE COURT: He said that.

A I already said that this morning.

THE COURT: Please.

A If I sound a little rash, I don't mean to be that way.

THE COURT: Please, let us not argue. Let us just get this over with.

Q Can you tell us the circumstances under which you heard Mr. Levy tell Mr. Chapman that this was going to be his album? I believe you said at the farm that you overheard Mr. Levy tell Mr. Chapman that this was going to be --

A At the fireplace. They were standing in the living room at the other side of the house --

Q In the living room?

A Somewhere in the living room.

Q And what was said?

A That Lennon was giving an LP for TV for Morris Levy.

Q Mr. Levy said that?

A My best recolledtion.

Q And did Mr. Chapman make a response?

A I don't recall.

Q And was anybody else present?

A I don't recall.

Q At the time that the tape was delivered to the Club Cavallero, Mr. Kahl, did it come in one box or in two boxes, do you recall?

A To my best recollection, it was one box.

Q Were there any markings on that box?

A To my recollection, I don't remember any markings

at all on that one box.

Q It just came in a plain box?

A One box.

Q And was any box sent back to the Plant because of some problem with it and then another box was delivered?

A Not to my recollection, sir.

Q So you took the one box with you and then you put it on Mr. Levy's desk?

A That is correct, sir.

Q At the time that there was a discussion about that tape being delivered was there any discussion about what kind of tape it was, that is, whether it was a 7-1/2 inch ips or a 15 inch ips or whatever?

A No discussion like that, except that John Lennon said to Morris Levy "It is finished, it is your baby, it is all yours now."

Q So Morris said to Mr. Lennon "Where is it?"

He says "At the Record Plant."

He says, "Can I get it/'

He said "Yes," and somebody made a phone call.

As I testified again this morning, it was delivered to the Club. I took it home. They partied up that night. I had an 8:30 appointment.

THE COURT: Okay.

MR. PRETTYMAN: Your Honor, I don't want to be blamed for this because I am not asking him to repeat.

THE COURT: This goes beyond Mr. Prettyman's question. All right. Next question.

MR. PRETTYMAN: If I can take just a moment, your Honor, to quickly review, I believe I am pretty close to through.

THE COURT: Sure.

Q Mr. Kahl, have you ever personally seen any of the contracts between Capitol or EMI or Apple or the Beatles?

A No, sir.

Q Did you ever ask to see them?

A No, sir.

Q Did Mr. Levy ever tell you that he had seen them?

A I don't recollect that at all, sir.

Q Have you ever met Mr. Menon of Capitol Records?

A No, sir.

Q And have you ever talked with him on the phone?

A No, sir.

Q Have you ever had any conversations with Mr. Coury of Capitol Records --

A I met Mr. Coury in California --

Q Excuse me. Let me just finish the question.

A I am sorry I interrupted you.

Q Have you ever had any conversations with Mr. Coury of Capitol Records in regards to this lawsuit?

THE COURT: Didn't you cover this on his deposition? This again is discovery.

He didn't testify on the stand that he had anything to do with Mr. Coury. He said he observed some meetings and then once it got assigned to Adam VIII he was [illegible]. He testified to a very limited role and I assume he didn't have any other role.

I assume, furthermore, that you have asked all these discovery type questions on his deposition.

MR. PRETTYMAN: That is quite true, sir, but I would like to point out to you that in view of the charges in the complaint I have to cover every base to make sure --

THE COURT: No, you really don't. Every witness doesn't cover every base. Let's terminate this, please.

MR. PRETTYMAN: Your Honor, I am not allowed to establish that he had no contacts with my clients in regard to this case?

THE COURT: He hasn't said he did.

MR. PRETTYMAN: All right.

Q At the time that the assignment was made between Big Seven and Adam VIII was there any discussion between you and Mr. Levy about what payments Big Seven would receive from Adam VIII or what Adam VIII would receive as its share or anything of that sort?

A No, sir.

Q And was that particular assignment discussed at the October 8th meeting?

A No, sir.

Q Was the assignment discussed at any future meeting that you attended?

A No, sir.

THE COURT: What is the date of that assignment?

MR. PRETTYMAN: December 11th.

THE COURT: Okay.

MR. PRETTYMAN: That is all I have, your Honor.

THE COURT: All right. Does Mr. Begen have anything?

MR. BERGEN: Yes, very brief.

CROSS EXAMINATION

BY MR. BERGEN:

Q Mr. Kahl, you testified this morning that at the meeting on October 8th Mr. Seider mentioned to Mr. Levy would $200,000 settle this breach. Do you recall that?

A Yes, sir.

Q I read from your deposition at page 96, Mr. Kahl:

"Q Do you recall Mr.Seider saying during that meeting on October 7th or 8th to Mr. Levy where a few hundred thousand dollars would settle the problem about this violation of the contract by Mr. Lennon?

"A They may have discussed that. I don't recall."

A Later on in my deposition you will find that I do recall, and if you read the entire deposition you will find that I do remember that.

Q I have read it.

A Thank you.

Q This agreement that you have testified was arrived at on October 8th, was that to be a license agreement between Mr. Lennon and Adam VIII?

A Will you repeat the question, please?

MR. BERGEN: Will you read the question back to him.

(Question read.)

A It was an agreement decided between John Lennon and Morris Levy on behalf of Adam VIII.

Q Yes, but my question was was Mr. Lennon licensing these masters, these master recordings, to Mr. Levy and Adam VIII?

A Well, I don't know where he was licensing. He was telling him "I will give you this package for TV."

Q How long was Mr. Levy going to have the package for, how long a period of time?

A I don't recall, sir.

Q Did they talk about two to three years?

A No, sir.

Q You testified that over a period of years the value of the settlement of Come Together would be much more than $200,000.

Can you tell us how much it would be?

A In my deposition, if I recall, I could never calculate a figure, because the music publishing business --

THE COURT: All right. You don't need to expand on that. In other words, you can't give a precise figure. That's the answer.

Q Mr. Levy has said that it would be worth at least 500 to $600,000. Is that a correct estimate?

A I believe in my deposition I didn't come to that figure, but in my deposition I said that it was worth far more than $200,000, and that I couldn't calculate a figure.

THE COURT: Anything else?

MR. BERGEN: Yes, your Honor.

THE COURT: All right.

Q Mr. Kolsky, I read you from your deposition with respect to the value of the Come Together settlement:

"Q Is there any way of knowing" --

MR. SCHURTMAN:Page?

Q Page 196:

"Q Is there any way of knowing what the dollar amount was?

"A I couldn't tell you.

"Q Is there any way of figuring that out?

"A I don't know.

"Q Would anyone at Big Seven know the way to figure that out?

"A No.

"Q Who would know that?

"A I wouldn't know offhand" --

THE COURT: You know, time is just passing. We are not involved in the Big Seven settlement or that other settlement. Let us go to something else.

MR. BERGEN: Your Honor, I submit --

THE COURT: I am not going to permit you to go into it any further. I have heard enough about that. It is of peripheral relevance to this case.

It was perhaps discussed, but we don't need to spend hour after hour on it. Now let us go to something else, if you have anything else?

MR. BERGEN: Your Honor, if you will excuse me, we have not spent hour after hour on it. I asked Mr. Kahl one question.

THE COURT: I am exaggerating.

MR. BERGEN: Mr. Levy has testified to a 500 to $600,000 figure.

THE COURT: I am ruling I will not permit you to go on reading deposition testimony about that point. Now go to something else.

Q This morning, Mr. Kahl, you testified that there were conversations around the table at the farm and you said that some of the people asked Mr. Lennon about the TV package, some of the musicians, and they said it was a marvelous idea, and that you heard John Lennon say he was doing this album for Morris Levy and you heard him say this to the musicians.

I read you from page 74 of your deposition

about the weekend:

"Q Was there any discussion that you heard about the album that Mr. Lennon was rehearsing during that weekend?

"A It was obvious. We discussed it.

"Q Can you tell me what the discussion, the nature of the discussion was?

"A John was delighted, he couldn't wait to go into the studio to finish his album.

"Q Was anything else said?

"A Not to my knowledge.

"Q Do you recall talking to musicians at all about the album?

"A Yes.

"Q What did they say, to the best of your recollection?

"A They were excited at the fact that -- they were up there and they said they were doing a nostalgic album and it would be a fantastic thing."

Do you recall that testimony?

A You just read my testimony, haven't you?

Q Do you recall that on your deposition?

A Yes. You just read it.

THE COURT: I want to know, Mr. Schurtman, was there any later point where he adds any conversation by

Lennon or by the musicians at the farm about this being an album for Levy. Do you know of any such passage?

MR. SCHURTMAN: In the deposition?

THE COURT: Yes, because I would regard -- can I have that read over again.

(Record read.)

THE COURT: I will assume, unless I am told promptly, that there is no statement in the deposition in which he states that Lennon said that he was doing the album for Levy or that a musician said that Lennon said he was doing the album for Levy or anything of that nature.

Okay. Go ahead, Mr. Bergen.

Q I just want to read you one more question and answer, Mr. Kahl, also from page 75:

"Q Do you recall discussing the album with any of the guests who were there that weekend other than the musicians?

"A No."

Do you recall that testimony?

A Yes, I do, sir.

MR. PRETTYMAN: Could your Honor's question to Mr. Schurtman encompass Mr. Chapman in the light of that?

THE COURT: Yes, I think that is a good idea.

All right, go ahead, Mr. Bergen.

Q With respect to the meeting with Mr. Graham that you said you were kind of in and out of, you said this morning that the conversations between Mr. Graham and Mr. Seider and Mr. Levy were what he, Mr. Levy, would spend for TV exposure and what costs would be. Do you recall that testimony?

A Yes, I do, that Mr. Graham and Mr. Seider --

Q No. I just asked you if you recalled that testimony.

THE COURT: All right. You asked your question. We all recall it.

Q I read you from page 80 of your deposition:

"Q Do you recall anything being discussed while you were there about what was going to be spent on advertising for this album?

"A No, I don't recall that at all."

Do you recall that deposition testimony?

A Yes. If it is there, yes.

THE COURT: If it is there, I don't think he is denying that he gave it.

Q Now, referring to the night that the tape was given to Mr. Levy, I read again from page 82 of your deposition:

"Q Can you describe how the tape came to be delivered at the Club Cavallero?

"A John came in with May Pang for dinner or supper or a drink, whatever, and he said -- Morris sat down and I joined them -- and he says, 'Morris, I have heard the finished product. It is marvelous. I don't want to hear it any more. It is in your hands now.'

"He says, 'Where is it?'

"He says, 'Well, it is at the Plant.'

"He says, 'When can I get a copy?'

"He says, 'Get somebody over here.'

"I don't know who made the pnone call, whether it was John or May Pang."

Do you recall that testimony?

A Yes, I do.

Q Do you recall who theother couple was that was with Mr. Lennon and May Pang that night?

A It may have been an engineer; it may have been a personal friend. I don't recollect. Somebody I didn't know. I may have met once.

THE COURT: With whom?

THE WITNESS: With John Lennon and May Pang.

Q Now, during the time prior to October 8 were you ever in contact with Marty Machet about the Spector tapes?

A Prior to when?

Q Prior to October 8.

A Yes, I was.

Q Do you recall when that was?

A No, I don't recall. I don't recall the date.

Q Can you tell us what you and Mr. Machet discussed?

A I think I discussed something with Mr. Machet, because I was aware of the Big Seven and Capitol contract, and I had a copy of this contract on my desk and I had called Mr. Machet and was wondering when these sessions would take place, and he told me that John had recorded a song, Angel Baby, and that it had come out fantastic and I reported that to Mr. Levy.

Q Were you aware of the problems that Mr. Lennon was having with respect to the Spector tapes?

A At that time, no, Mr. Machet never told me of any problems.

Q When did you become aware of that?

A The night of October 8.

Q Now, one last question: Do you recall when you started calling for rates on the Roots Album?

A I never called for rates on the Roots Album.

MR. BERGEN: No further questions.

THE COURT: Do you have anything, Mr. Grumbach?

XXX

CROSS-EXAMINATION

BY MR. GRUMBACH:

Q Mr. Kahl, I believe you testified earlier today that you paid no attention to discussions between Mr. Seider and Mr. Graham and Mr. Levy that had to do with foreign transactions because you were not working for Adam VIII, and therefore, that was not of any interest to you?

A That is what I testified to, yes.

Q Now, let me read you from page 161 of Mr. Levy's deposition:

"Q Did you reveal to Mr. Lennon that it would be necessary for Adam VIII to license companies outside of the United States to sell this record.

"A That would not be done by Adam VIII. That would be done by Big Seven, because the prime rates were going to be Big Seven based on the settlement of the thing.

"Q I thought you just testified a moment ago that Adam VIII --

"A I was confused before that thing when you clarified it. Adam VIII is the marketing company in America. Let me clear it up.

"Q Surely.

"A And I think I testified earlier that Big Seven would be getting the rights and if there were to be a licensee deals in other countries it would be Big Seven giving the license."

Now, what is your understanding as to who do the licensing in foreign countries? Big Seven or Adam VIII?

A I have no idea who would be doing it, because I was not at that meeting. I never heard that conversation in that deposition.

Q Now, I show you Exhibit 28, which is the assignment between Big Seven and Adam VIII. Is that your signature?

A Yes, sir, it is.

Q Did you discuss the terms of that document with Mr. Levy before you signed it?

A No, I did not, sir.

Q Why did you sign it?

THE COURT: What is the exhibit?

MR. GRUMBACH: 28.

A Mr. Levy is president of Adam VIII; he is president of Big Seven. He asked me to sign it. I read it. He made the assignment. I didn't have to ask Mr. Levy any questions.

Q He told you to do it and you signed your name?

A He asked me to sign it and I signed my name.

Q Do you know anything about the terms of this assignment between Adam VIII and Big Seven? Can you tell me how much Adam VIII is supposed to pay Big Seven?

MR. SCHURTMAN: By heart?

THE WITNESS: Let me see the document.

Q Do you recall offhand?

A I don't recall that offhand.

Q That says that Adam VIII would pay Big Seven $1.70 for a record and $2.42 for a tape? Is that correct?

A That is correct.

Q What would Big Seven have to pay, if anything, out of the amount that it was going to get back from Adam VIII?

A I don't recall.

Q You have no idea?

A No, I don't know anything about Adam VIII's business.

Q What about Big Seven's business?

A It is a publishing business.

Q I asked you what Big Seven would have to pay out of the $1.70?

A I don't know. That would be under the control of the company and the accountants could probably give you a better answer than I am qualified to give you, sir.

Q Do you know whether Big Seven made money in the last fiscal year?

A This past fiscal year?

Q Yes, the year ending June 30, 1975.

A Big Seven Music --

MR. SCHURTMAN: I object.

THE COURT: What is the relevance of that?

MR. GRUMBACH: There are several points, your Honor, among others, that this gentleman says that he is the vice president of this company, and I think I am entitled to show exactly what knowledge, if any, he has about it's affairs.

THE COURT: No, we are not interested in all his knowledge about Big Seven. We are interested in his testimony on specific points.

MR. GRUMBACH: I have no further questions, then.

THE COURT: Do you have any redirect?

MR. SCHURTMAN: I have two or three questions?

REDIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Kahl, you were asked on your cross-examination--

A Will you speak a little louder.

Q You were asked on your cross-examination about whether Capitol did or did not have any rights to television. Did you testify on page 26 of your deposition as follows:

"Q They started to talk percentages. I don't know verbally, but Lennon said to Morris Levy, he said, 'I think this can be worked out because there is no problem here. Capitol has no rights to my TV, and I think this will be the greatest thing I could do.'"

Do you recall giving that testimony?

A Yes, I do, and I said it this morning, too.

MR. PRETTYMAN: That is consistent with his testimony this morning, I was going to say.

5-2 Q Mr. Prettyman questioned you on cross-examination about a discussion of how performance under the Come Together Settlement, that is, the October, 1973, settlement would enhance catalogue rights. Let me ask you if you gave this testimony at pages 17 and 18:

"When I sat down, they were discussing damages, the violation of the contract,that they admitted to the damages, and they were talking very big numbers. I don't recall the numbers. 'What can we do about it?'

"And John Lennon was beginning to get close to Morris, because Morris said, 'I don't want to hurt anybody, but tremendous damage has been done.' And I was asked questions, if John Lennon had recorded the three songs in his album, how it would enhance our catalogue, what it could have done to our catalogue internationally, as any songs by John Lennon

do, because he is one of our great, great, composers of today.

Now, your Honor, there was additional testimony on the same point. I am perfectly happy to read it in just to show the witness had given that testimony previously.

THE COURT: It is not necessary.

MR. SCHURTMAN: Just for the record it is on pages 30 and 195.

Q Now, the next question you testified in your deposition that Mr. Garlick was at the farm during the rehearsals. Is that still your recollection today?

A I tell you, Mr. Garlick has a daughter living up near Ghent, and a son-in-law. He visits quite frequently his daughter, practically every other week, and for the past nine months to a year or so I have been attending Mr. Levy's farm on weekends. Mr. Levy would leave on Thursday, I would leave after my office hours on Friday, sometimes late on Thursday night, and there were always people coming and going in Mr. Levy's home. Whether they be people in show business or country people or the town people, he always had house guests in his home. So if I had mentioned in my deposition he was there, I may have overlooked that to my recollection he was. He may not have been there.

MR. SCHURTMAN: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

MR. BERGEN: May Pang, your Honor.

MR. PRETTYMAN: May we have a fewminutes recess?

THE COURT: Let's have a little recess.

(Short recess.)

M A Y P A N G, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BERGEN:

Q Where do you live, Miss Pang?

A I live at 1619 Third Avenue in New York.

Q Do you know John Lennon?

A Yes, I do.

Q How long have you known Mr. Lennon?

A Since December of 1970.

Q By whom were you employed then?

A By Abkco Industries.

Q How long have you been working for Abkco at that time?

A A little over a year.

THE COURT: You mean as of December, 1970?

THE WITNESS: Yes, at that time I had worked for Abkco Industries for about a year.

Q Now, did there come a time when you became employed by Apple Records, Inc.?

A Yes.

Q And when was that?

A Shortly thereafter, around June of 1971.

Q And what were your primary duties with Apple Records, Inc.?

A Apple Records? I basically worked for John Lennon and Yoko Ono.

Q Did there come a time when you worked for Lennon Music Inc.?

A Yes.

Q And when was that? When did you begin working for them?

A August of 1974.

Q Are you still employed by Lennon Music Inc.?

A No.

Q When did you cease being employed there?

A January 2 of this year.

- - -

5 pm

Q Do you still work foreither Mr. Lennon or Yoko Ono in any capacity?

A No.

Q Do you know Morris Levy?

A Yes.

Q When did you first meet Mr. Levy?

A I met Mr. Levy on October 8th, 1974.

Q Where?

A At the Club Cavallero.

Q And that is here in New York City?

A Yes.

Q Who was present when you met Mr. Levy?

A Mr. Seider, Mr. Lennon, Mr. Bernard Brown and myself. We met Mr. Levy at the Club Cavallero.

Q Did you have any dinner at the Club?

A No.

Q Where did you have dinner that night?

A At a Benihana REstaurant on West 56th Street.

Q And did you and Mr. Seider and Mr. Lennon and Mr. Brown have dinner there?

A Yes.

Q And did you all go directly from the Benihana to the Club Cavallero?

A Yes.

Q And you all went into the Club Cavallero together?

A Yes.

Q Can you tell us where you sat?

A When we entered the dining room we sat at the first booth on the left.

Q Can you describe to us who was sitting where?

A It was a U-shaped booth and to my left --

Q I show you Defendnats' Exhibit CA and ask you if that is the way everybody was sitting that night.

A Yes.

Q How long were you at the Club Cavallero that night?

A About two hours.

Q As best you can recall, can you tell us what was said,and tell us who said what when you are relating to us the varous statements.

A After we sat down in the booth and had our drinks ordered Mr. Levy leaned over to Mr. Lennon, said, "What happened?"

And Mr. Lennon proceeded to tell him about the tapes that he had done with Phil Spector, the recording tapes. He went on telling him about it and how much problems he had trying to get it back. He wanted -- he tried for six

months through various people to obtain those tapes and didn't come up with them until two days before he had decided that hw as going to record a new album, and by that time it was too late to go on to -- to go back to do the Rock and Roll album with the Phil Spector tapes.

Mr. Levy then said "Well, that's spilt milk. What should we do from there?"

And Mr. Lennon said "I have no idea. Out of the tapes, out of the nine songs, there is only about four or five that can be really salvaged, because the others weren't that good at all."

Mr. Lennon then proceeded -- he thought about doing and EP, which is a record consisting of four cuts --

Q Is that an extended play record?

A Just an extended play. It is a small record.

Q And Mr. Lennon mentioned this to Mr. Levy?

A Yes. It is not usually done in America. It is just -- it is usually done in England, not here. So we thought it would be a novelty idea.

Then Mr. Lennon also said, "Well, I also thought of maybe some TV mail orders," and Mr. Levy then said "Well, that's something right up my alley," and Mr. Lennon just looked at him and Mr. Levy proceeded to tell him that "Do you know -- have you ever heard of Adam VIII?"

And I turned around and I said "Yes," and he said "Well, those are my products that I put on TV. I have, you know, I have access to TV mail orders."

And Mr. Lennon sat there and absorbed what was going -- you know, what Mr. Levy was telling him. He says "If you want to do it, you know, I have the outlets."

And Mr. Lennon just sat there. Mr. Lennon then replied "I don't know if I can do it."

He looked over to Mr. Seider and Mr.Seider then said "No, you are signed to an exclusive contract still to EMI at this point."

THE COURT: I will tell you, I think you better speak a little slower and a little louder, if you could.

THE WITNESS: Sure.

THE COURT: Let's have just the last few lines.

(Record read.)

A So Mr. Levy at that point made a joke and he turned to Mr. Seider and says "When are you getting to the next plane going to England?"

Q What was Mr. Seider's response to that?

A He just laughed.

Q Can you recall anything else that was said?

A Right now I can't recall.

Q Was there anything said about Mr. Lennon's

royalty duirng the course of the meeting?

A No.

Q Was there anything said about retail fulfillment centers?

A Not to my recollection.

Q Do you recall anything else that was said about the Spector tapes?

A No, except that it was hard to get, it was hard to get, to obtain them.

Q How long did it take Mr. Lennon to describe what had happened to the Spector tapes and the problems surrounding that?

A I am sorry. Would you repeat that, please?

MR. BERGEN: Would you read back the question to her, please.

(Question read.)

A It took Mr. Lennon around 15 to 20 minutes to explain what had happened and the difficulties with that recording session and he did explain to Mr. Levy that he did do a few of the songs that he was -- that Mr. Levy owned in regards to the Come Together suit.

After he explained it he told Mr. Levy that if he wanted to he can come down to the studio the next day to listen to the songs that he had recorded.

Q Was there any reference to Mr. Lennon avoiding the critics by using mail order, television mail order?

A He made reference to it, but that's it.

THE COURT: Keep your voice up.

Q Was there any discussion as to the price of an album that would be sold?

A Not to my recollection.

Q Was any agreement arrived at among the parties that night with respect to a record album or anything?

A No.

Q Did Mr. Levy continue to ask Mr. Seider to go to England during the course of the evening?

A I think just that once.

Q You say that Mr. Lennon asked Mr. Levy to come to the Record Plant the next day so he could hear the songs that he had recorded?

A Yes.

Q Can you recall anything else that Mr. Lennon said with respect to that invitation?

A He said that if he didn't believe him, you know, he can come down and listen to those songs, and he actually did record them.

Q Did Mr. Levy come to the REcord Plant the next day?

A Yes.

Q Can you tell us what happened at the record plant the next day when Mr. Levy arrived?

A When Mr. Levy arrise he was ushered into the studio control room and he sat down and we played him the songs, especially Angel Baby and You Can't Catch Me, which are -- which belongs to him.

Q Were all of the songs, all of the Spector tapes, played for Mr. Levy?

A Not that I can remember.

Q Was there any discussion while you were at the Record Plant about --

THE COURT: I am sorry. The question about were all the tapes played and the answers, can you read that.

(Record read.)

Q Was there any discussion between Mr. Levy and Mr. Lennon about Mr. Lennon doing a record album for Mr. Levy at the Record Plant that day?

A No.

Q When was the next time you saw Mr. Levy?

A After --

Q After that afternoon.

A That evening.

Q Where was that?

A At the Club Cavallero.

Q What was the purpose of being at the Club Cavallero that night?

A In the afternoon I had told Mr. Levy that all the fuss around the Record Plant in the afternoon was because of Mr. Lennon's birthday.

So he suggested that Mr. Lennon come down to the Club Cavallero and he would throw a little party, and I said I didn't know, I said, because we had a benefit to go to that night for Ahmet Ertegun, and I told him if he wants to he can inform Mr. Lennon, and he went and told Mr. Lennon that he was going to throw a party, and so after the benefit Mr. Lennon, Mr. Bernard Brown and Mr. Seider went to the Club Cavallero.

Q Was there any business discussed between Mr. Lennon and Mr. Levy that you were aware of at the Club Cavallero that night?

A No.

Q Was there any mention of any record album that Mr. Lennon was supposed to be doing for Mr. Levy?

A No.

Q Do you recall when you next saw Mr. Levy after that night at the Club Cavallero October 9th?

A It was not too long after that. I really don't remember the date.

Q Where did you see Mr. Levy?

A At the Club Cavallero.

Q Prior to the next time that you saw Mr. Levy had Mr. Levy invited Mr. Lennon to come to his farm?

A Yes.

Q When was the first time he did that?

A He had mentioned it several times. I don't know what days or when.

Q This next time you saw Mr. Levy did he invite Mr. Lennon to the farm again?

A Yes.

Q Can you tell us what happened and what was said by each of the parties?

A Right. Prior to going to the Club Cavallero I had received several phone calls from Mr. Levy wanting Mr. Lennon to come downto the Club Cavallero. We agreed to whatever night it was to go down there and he had informed me that he was going to try and get Mr. Lennon to come up to the farm.

So I in turn told Mr. Lennon that when we go over tothe Club Cavallero that Mr. Levy is going to try and get him to go to the farm.

Mr. Lennon informed me that he was going to try his very best not go go, you know, that he didn't want to go up to the farm because he was too busy, because he wanted to do the -- he was preparing for his -- the couple of songs that he was going to record in the Record Plant.

Q This is for the Rock and Roll album?

A Right. So we arrived at the Club Canvallero, we met with Mr. Levy, we sat down, and he says -- you know, he kept asking about "You going to come up to the farm this weekend?"

Mr. Lennon says "No, I can't. I have too many musicians. I just can't go. I have the studio time booked.

"He says "Don't worry about it. Bring the musicians."

Mr. Lennon says "No, I can't go. Everything has been booked."

I had gotten up from the table at that point and went to the ladies' room or something and came back and by the time I had gotten back Mr. Lennon looked at me and he says, "We are going to the farm this weekend."

And I said "What happened?"

He says "He has convinced me in going."

Q Was there any business purpose in going to the Club Cavallero this night?

A No real business, no.

Q Was it just to have a drink or --

A Just to have a drink, yes.

Q Do you recall when you went to the farm?

A Yes. It was a Thursday. I don't remember the date. It was around the 16th or something. I really don't remember.

Q How did you get to the farm?

A Mr. Levy drove us up.

Q And who was in the car with you?

A It was Mr. Lennon, myself, Mr. Levy and Mr. Mottau.

Q Who is Mr. Mottau?

A He is one of the musicians.

Q Was there any discussion in the car going up to the farm about a record album that Mr. Lennon was doing for Mr. Levy?

A No.

Q How many musicians came to the farm that weekend?

A Five.

Q Can you briefly tell us what took place during thecourse of the weekend?

A Several of the musicians arrived at different times. So on Friday we had about three musicians there.

The other two arrived on Saturday. So we rehearsed -- Mr. Lennon rehearsed with as many as he had that Friday. He rehearsed for about five hours.

Q On Friday?

A Yes.

Q What about on Saturday?

A On Saturday, whatever time he woke up, after breakfast he rehearsed for an hour or two, then we had lunch, and then we rehearsed a couple more hours, and then it was dinner, and everybody rested from dinner on.

Q Were there any rehearsals at all on Sunday?

A None.

Q What time did you leave on Sunday?

A Somewhere around one or so.

Q Were there any discussions that you overheard between Mr. Levy and Mr. Lennon about Mr. Lennon doing a re album for Mr. Levy?

A No.

Q Did you hear any discussion between Mr. Lennon and the musicians to the effect that he was doing a record album for Morris Levy?

A No.

Q Did you hear either Mr. Lennon or any of the musicians telling any of theother defendants that weekend

that Mr. Lennon was doing a record album for Mr. Levy?

A No.

Q Did you overhear Mr. Lennon discussing any business with any of the defendants or Morris Levy?

A No.

Q Did you participate in any discussions like that?

A No.

Q Do you recall the recording sessions for the Rock and Roll album?

A Yes.

Q When were they?

A They started around October 21st.

Q And when did the basic recording sessions end?

A About the 24th or 24th. They were the basic recording.

Q Were Mr. Levy or Mr. Kahl involved in any of the recording sessions?

A No.

Q Was anybody from Big Seven or Adam VIII?

A No.

Q Was anybody from Big Seven or Adam VIII, including Mr. Levy and Mr. Kahl, involved in any of the work on the Rock and Roll album?

A No.

MR. SCHURTMAN: I object to that last question unless it is put in context.

MR. BERGEN: Context of what?

THE COURT: It is a question. I think it is a perfectly clear question.

MR. SCHURTMAN: Would you read back the last question?

(Question read.)

MR. SCHURTMAN: "Any of the work" can include almost anything, inlcuding getting sheet music, old records.

THE COURT: That's the question and that's the answer.

MR. SCHURTMAN: All right.

THE COURT: Okay. Let's go.

Q Were you present during all of the recording sessions and the other work on the album?

A Yes.

Q Do you recall a time when Mr. Lennon gave Mr. Levy a copy of the Rockand Roll album?

A You mean the tape?

Q The tape, yes, a tape copy.

A Yes

Q When did that happen?

A After Mr. Lennon had finished remixing we went

by the Club Cavallero.

Q Do you know when approximately that was?

A Some time the first week in November. I don't remember.

Q Prior to this had Mr. Levy ever asked you or Mr. Lennon for a copy of the Rock and Roll album?

A Yes.

Q How many times?

A He asked me on several occasions when he used to call. He used to call every few days to see how everything was going and he would ask when he can have a copy.

Q Did he ever ask Mr. Lennon directly?

A Yes.

Q Can you tell us as best you can remember what happened the night at the Club Cavallero when Mr. Levy was given this tape?

A The tape hadn't arrived and I went to make the phone call to the Record Plant to find out what had happened to it, because we had ordered a copy for Mr. Levy.

THE COURT: You mean prior to going to the Club you had ordered a copy?

THE WITNESS: Yes.

Q And this was pursuant to a request by Mr. Levy?

A Right.

Q Did Mr. Levy ask for any particular kind of a tape?

A He just said for his tape recorder, a 7-1/2. I said "That's fine."

Q Did you say where this tape recorder was?

A I guess in his -- I believe he said it was in his office.

Q You were saying you went to the phone?

A Right. I made the call and somebody at the Record Plant said they were just finishing up and it would be over as soon as possible.

I went back and I told Mr. Levy and Mr. Lennon that and about half an hour to an hour later Tom from the Record Plant, an employee of the Record Plant studio, dropped off the tapes and he handed Mr. Levy the 7-1/2 copy of the Rock and Roll album.

He had said to me that it was split -- he had said it to everyone, really -- that it was split on two separate reels because they couldn't get all the songs on one reel.

THE COURT: What arrived, just those two reels?

THE WITNESS: The two reels and a 15 ips copy for Mr. Lennon.

Q At the time this tape copy was delivered to

Mr. Levy had Mr. Lennon finished working on the album?

A No, there was still more to do.

Q Can you tell us what Mr. Lennon had to do after that?

A He still had one more stage of the recording to do, which is the final mastering, the final mastering lacquer where the album would be made from, would be pressed from, and he still had to do some EQing, he was still editing things down, some of the songs down.

Q Do you know what editing he did to some of the songs?

A He just -- he just shortened a lot of it. I can't remember anything else.

Q Do you know whether he did any work on You Can't Catch Me?

A Yes. He took the very beginning of the song, I don't know, the first eight bars, and he repeated that and put it in the middle of the song.

Q Where did Mr. Lennon get the idea for doing that?

MR. SCHURTMAN: Objection unless he told her.

Q Did Mr. Lennon tell you where he had gotten --

THE COURT: I can't hear you.

MR. SCHURTMAN: I said I object unless Mr. Lennon

told her. Even then it is probably hearsay.

THE COURT: I haven't really heard any contradiction of Mr. Lennon.

MR. BERGEN: I withdraw the question.

Q Do you recall Mr. Levy at one point inviting Mr. Lennon to go to Florida?

A Yes.

Q When did that happen?

A That happened around the late part of October, beginning of November.

Q What was the purpose of going to Florida?

A Mr. Lennon -- his son was going to visit him for Christmas and he didn't know where to take him and Mr. Levy said "Well, I am taking my son down to Florida. Why don't you come down. The two boys will get together, they are around the same age, and they will have a good time down there."

Q Was one of the purposes of going to Florida to discuss or do a commercial for a record album?

A No.

Q Did you go to Florida?

A Yes.

Q Were there any discussions in Florida between Mr. Lennon and Mr. Levy about Mr. Lennon doing a record album

for him?

A Not to my knowledge.

Q Did you ever send a tape copy of the Rock and Roll album to Mr. Coury from Capitol?

A Yes.

Q Do you recall when that happened?

A Some time in January, around the second or third week.

Q How did you come to send this tape copy to Mr. Coury?

A Mr. Seider had called me and said that Mr. Coury would like to hear the album.

Q Do you know where Mr. Seider was when he called you?

A In California.

Q Did you subsequently meet with Mr. Coury about the Rock and Roll album?

A Yes.

Q When was that?

A It was thethird or fourth week of January,and we met in New York at the Sherry Netherland.

Q Who was present at this meeting?

A At the meeting, Mr. Seider, Mr. Lennon, myself, Mr. Kohara and Mr. Kileen, and Mr. Coury.

Q And Mr. Coury?

A Yes.

Q Was there a meeting before the meeting at the Sherry Netherland where Mr. Kohara and Mr.Kilee n weren't present?

A We went out to dinner, Mr. Coury, Mr. Seider, Mr. Lennon and myself.

Q Do you recall where you ate?

A At Gallagher's REstaurant.

Q Was anything discussed about the Rock and Roll album at dinner?

A Yes.

Q What was discussed?

A Mr. Coury thought that the album was fantastic, that it should be sold through the regular market. Mr. Lennon had asked him what did he think about selling it on TV and Mr. Coury gave his opinion that he didn't think it was-- it wasn't a good idea, that it would be better off to be selling it through the normal process, through the regular channels, through dealers.

Q Did Mr. Coury said why he thought it should be sold through the regular channels?

A I don't remember.

Q What was discussed at the Sherry Netherland?

A We went back to the Sherry Netherland to discuss the marketing program for this album, and that's when Mr. Kohara and Mr. Kileen came down to join us.

Q Can you tell us what was discussed about the marketing program?

A Mr. Kohara showed us his album cover that he designed and which Mr. Lennon liked, but prior to that Mr. Lennon had this other album cover that someone had made up, which is a picture of Elvis Presley in a gold suit, it is one of his own album covers, but with the head of Mr. Lennon instead of Elvis Presley's head.

WE saw that and then Mr. Kileen was talking about what should we do, should we have T-shirts made up. We were talking about billboards. We thought about in Los Angeles we would have a billboard with the music coming out, excerpt songs from the Rock and Roll album, which we found out later we couldn't use.

MR. SCHURTMAN: Your Honor, I have to request a continuing objection to matters that were said outside the presence of my client. I know we have been letting this testimony in, but apparently there is a problem with it.

THE COURT: Apparently there is what problem?

MR. SCHURTMAN: There is a problem about

conversations that took place outside someone's presence and I will therefore object to any conversation that took place at which my clients were not present.

THE COURT: It's awful late to raise that problem.

MR. SCHURTMAN: I know, but apparently it is raised whenever I question a witness.

THE COURT: I want you to get the references to that in the record and you show them to me first thing tomorrow.

MR. SCHURTMAN: Yes, sir, I will.

THE COURT: Will you do that?

MR. SCHURTMAN: I will be glad to.

THE COURT: Okay.

Q Can you get back to the album cover?

A Yes.

Q Was there a final decision on what the album cover was going to be?

A Yes. The album cover consisted of the photograph that Mr. Lennong had liked and was a picture of him in earlier days. It was taken by a German photographer, Jurgen Vollmer, and he had it all done up and Mr. Lennon approved of it.

Q Was there any discussion about the title of the

album?

A Yes. It had rock and roll on it and Mr. Lennon really thought that was just perfect, rock and rol , it was just simple, just right on, as he would say.

Q Do you recall anything else that was discussed at this meeting?

A I remember that we -- that I had called Mr. Vollmer for Mr. Kohara to discuss a price on the photograph.

Q Can you tell us what the conversation was between you and Mr. Vollmer?

A I had told him -- I had informed him that Mr. Lennon would like to use the photograph, since he had the exc' e rights and it was his photograph, we wanted to use it for Mr. Lennon's album cover, the rock and roll, and I would put Mr. Kohara on the phone, who was from Capitol, head of the art department, and that he can discuss the price. I believe it was something like $500.

Q And was an arrangement worked out with Mr. Vollmer to purchase the rights to the photo?

A Well, it was his photograph.

Q Was there an arrangement where Capitol would purchase the rights to the photo?

A Right, in connection with this album.

Q Just in connection with this album?

A Just in connection with this album.

Q Did you see Mr. Levy after you left for Florida?

A No.

MR. BERGEN: Your Honor, maybe this is a good place to break.

THE COURT: All right. We will resume tomorrow at 10 o'clock.

(Adjourned to Tuesday, January 27, 1976, at 10:00 a.m.)

g Seven

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Harold Seider (Resumed)		1286		
Philip Kolsky	1297	1351	1432	
May Wang	1435			

EXHIBIT INDEX

	Identification	In Evidence
Plaintiffs		
23		1328
Defendants		
JF		1358

Big Seven Music Corp. et al.

v. 75 Civ. 1116

John Lennon, et al.

New York, New York

January 27, 1976
10:45 a.m.

- - -

(Trial resumed.)

- - -

(In open court.)

M A Y P A N G, resumed.

THE COURT: Are you going to conclude with Miss Pang?

MR. BERGEN: Yes.

MR. PRETTYMAN: Your Honor, may I take up one preliminary matter.

THE COURT: Right.

MR. PRETTYMAN: When I was in Los Angeles conferring with the Capitol officials in regard to our responses to interrogatories I asked the art department to come up with whatever they still had in existence that related to the art work on the Rock and Roll album.

One of the things that they produced was a picture, which I hold in my hand, of Mr. Lennon, and I asked

them to send that to New York so it could be included in Exhibit 11, which was in response to interrogatory 45.

Thereafter, that picture was sent to New York, and as a matter of fact, Mr. Tillinghast spoke on the phone with Mr. Gold of Granett & Gold, who in the midst of a conversation on other facts mentioned the fact that this was coming. Apparently it had arrived and I did not realize it had arrived until I had reviewed all of the exhibits I had produced and realized that I had seen something in Los Angeles which I did not find in the answers to interrogatories.

In the light of that I am prepared not to introduce this, since your Honor may feel it would be unfair to produce it at this stage, but I at least think the record ought to reflect that such a thing is in existence.

I sincerely apologize for the mix-up. I don't think it is an important factor, but I just wanted the record to be clear as to what occurred.

THE COURT: All right.

MR. PRETTYMAN: I would be happy to show it to plaintiffs' counsel.

THE COURT: Yes, it will be available if plaintiffs' counsel wishes it.

I want to ask you, this is the ninth day of

trial today, and I apologize for keeping you today, I thought that we would be through by about 10, but we obviously weren't, and so forth, but we have had fairly full days and we are on the ninth one.

Now, it does seem to me that there is a way to arrive at a conclusion about whether there was a contract on October 8th, 1974, and nine days of evidence should about do it.

I would like to have you think how we can get this issue disposed of. I am not saying it has to be disposed of by noon or 3 o'clock or 4:30 today, but it ought to be disposed of pretty quickly now.

Now, I know that you have -- the defense undoubtedly wants to cross examine Mr. Levy some more, the plaintiffs' attorney wants to cross examine Mr. Lennon and Mr. Seider and so forth, but that shouldn't take an awful long time, it seems to me, and realistically the question is whether the plaintiff has sustained its burden of proving an oral contract on October 8th, and we have gone into those discussions until I think the lawyers themselves know that we have heard a lot of repetition, and the repetition has been important because it is a question of how much corroboration or lack of corroboration there is, so I don't mean to say that disparagingly. But there is

certainly circumstantial evidence to some extent for and against the existence of the contract by virtue of what went on afterwards, but when all is said and done we have an issue of whether the plaintiff has sustained the burden of showing an oral contract basically made as alleged on October 8, 1974. I do not see why it has to go on forever on that issue.

I am prepared to -- and I would hope that you could wind up the evidence on that point if not today, very soon after the end of the day today. We could have a short argument, the way you would sum up to a jury, and I could put my findings on the record, my factual findings, and then we can determine what legal implications flow from those as far as anything else. But I don't think it has to go on forever.

MR. PRETTYMAN: Your Honor, I am fully in sympathy with what you just said. May I just state the particular problem that I have?

THE COURT: All right.

MR. PRETTYMAN: As I indicated to you last week, Mr. Menon and Mr. Coury from Los Angeles, who are Capitol officials, were going to be in New York. Mr. Menon is here to testify today and Mr. Coury tomorrow. They do not go to the October 8th meeting and I am concerned because

I was hoping to put Mr. Menon on for both direct and cross today and Mr. Coury for direct and cross tomorrow.

THE COURT: I don't see why they would have to be long witnesses, in any event.

MR. PRETTYMAN: All they have to do is what?

THE COURT: I don't see why they have to be long witnesses.

MR. PRETTYMAN: No.

THE COURT: What are the other witnesses on the issue of the existence of the agreement? Are you going to call Mr. Klein, Mr. Schurtman?

MR. SCHURTMAN: Are you addressing me? Yes, your Honor?

THE COURT: Is Mr. Klein ready to come in?

MR. SCHURTMAN: Yes. We had scheduled him originally for Wednesday of this week and then Mr. Prettyman said he had witnesses coming in from California, so we have arranged with Mr. Klein's counsel for him to come in next week.

THE COURT: I can't believe that. What is going to take till next week?

MR. SCHURTMAN: Your Honor, would you like me to give you a list --

THE COURT: I think Mr. Klein ought to get

down here this afternoon. I really hope we can finish up with Miss Pang, we can but -- who is it?

MR. PRETTYMAN: Menon.

THE COURT: -- Mr. Menon on. I can't conceive what would take Mr. Menon hours and hours. It would seem to me we can get Mr. Klein in here this afternoon.

Wouldn't that be about it on the existence of the contract?

MR. PRETTYMAN: I don't think Mr. Klein goes to the existence of the contract.

MR. SCHURTMAN: Your Honor, we still have a number of witnesses who will testify that Mr. Lennon and/or Mr. Seider told them after October 8th that there was a contract with Mr. Levy. I think that testimony is essential to this case.

THE COURT: You mean like Mr. Masucci?

MR. SCHURTMAN: Mr. Masucci said that Mr. Lennon told it to him.

THE COURT: As far as what went on at the farm, let's be realistic. Nobody has testified yet, at least, no corroborating witness has testified, and I am speaking about Mr. Masucci -- he was your witness on the events at the farm, right?

MR. SCHURTMAN: Yes, and he testified that

Mr. Lennon told him that he was making an album for Mr. Levy.

We have a witness who testified before Judge Mac Mahon -- he is now out of the country and we will read his testimony in as soon as we have a chance -- Mr. Chapman, who is a banker from Florida, who said Mr. Lennon told him he was making a record for Mr. Levy.

We have several other witnesses --

THE COURT: Okay. Let us assume, just for short-cutting purposes -- I don't like the word shortcut, but just let us be very realistic. Let us assume that you can have a number of people come in, credible witnesses, who testify that Mr. Lennon said at the farm he was making the album for Mr. Levy. The evidence is of signi-icance, obviously, but the question is how much significance.

What I am trying to tell you is this: I have gone through this in my mind. Let us assume that that was said. I mean, I will just assume for purposes of argument that I credit that testimony,and that I would credit it just as much with one person saying it as 15 people saying it.

Now, in light of all the other testimony, the question you have got to wrestle with is whether that is enough. The issue to me is was that statement a real

admission of a contract or was it an expression of a hope.

Now, I think the record is almost undisputed that Mr. Lennon was interested, at least interested, in doing the album. I don't think anybody denies that. I mean, according to his version, he was interested all the way up into January, and he and Mr. Seider were pursuing it.

So the question is you take the 15 witnesses about the farm event and they all say, if they would, that Mr. Lennon said he was doing the album for Morris or doing the album for Mr. Levy. Does that really -- is it necessary or is it just cumulative and does it really -- is it an admission of a contract or an expression,a way of expressing interest and hope. That is what we have to worry about as far as the significance of the testimony about the farm, and I am not sure that there is going to be any great addition to the case or any addition at all if 15 people come in and say that.

MR. SCHURTMAN: I recognize the difficulty of proving an oral agreement and I fully agree with your Honor that parties ought to sit down and put everything in writing immediately and then perhaps we won't have this litigation, although I do point out that what started this whole thing was another written agreement which was actually read

into the record before your Honor. So I don't think written agreements are necessarily the be-all and end-all of a situation like this.

But in order to establish the oral contract I would hope to do several things, with your Honor's permission. First, of course, is the testimony of what happened at the meeting on October 8th. I know we have already heard testimony until we are all sick of it, although there has been very little cross examination so far. I think the cross examination of Messrs. Levy, Lennon and Seider is going to be critical on that point.

I would also suggest, because I am just as concerned about the time that we are spending on this case at ourt is, that perhaps you could put a limit on everyone's cross examination. I think two hours of cross examination for the principal witnesses, for each principal witness, should be more than adequate. I am certainly willing to abide by such a limit, because if I can't prove my points in two hours of examining Mr. Seider or Mr. Lennon --

THE COURT: Two hours is a lot. Anyway, I will consider that.

MR. SCHURTMAN: But let me continue to answer your Honor's direct question.

I think you will also find that the testimony as

to the October 8th meeting, in many ways there are more similarities than differences. The only differences are on the critical terms of the contract, price, mainly price and royalties. That is probably one of the few points on which the parties truly disagree.

Now, in order to establish an oral contract where you have two sets of witnesses giving you contradictory testimony I have to go to subsequent events and the subsequent events would include the following:

No. 1, the testimony of people not only at the farm but in other places who heard Mr. Lennon and/or Mr. Seider say "We have a deal with Mr. Levy"; the fact -- and I will renew my offer of proof at a later point that I made yesterday -- that it was common knowledge in this industry that a deal had been made between Mr. Lennon and Mr. Levy.

People all over the industry were calling Mr. Levy to congratulate him on his coup. Apparently the only people in the industry who claimed they didn't know about this deal is Capitol Records.

MR. BERGEN: Your Honor, this sounds like a closing argument.

THE COURT: Please, Mr. Bergen.

MR. SCHURTMAN: The third point that I want to bring in, and this I have to explain somewhat, is we will

show throughout the evidence -- we have only had one or two witnesses so far -- that in the music industry people often make oral deals, they start performing under the oral deals and then they put them in writing.

Mr. Levy has already testified that he had a discussion with Mr. Seider that at some point this deal was going to be put in writing. In other words, they weren't going to leave the deal oral forever.

Now what I have to do, your Honor, is to show the practice in the industry and I can't bring in a witness who will say "Yes, I made a $20 million deal orally and never intended to put it in writing." I don't pretend that I can prove that.

What I can prove to you through a succession of witnesses in the industry, important industry executives, is that it is common practice for these people, just like in the stock brokerage industry and in a lot of other industries, to make deals over the telephone, make deals over the dinner table. You heard Mr. Brown testify he made a deal --

THE COURT: I don't know the significance of the practice.

MR. SCHURTMAN: I have to put it in.

THE COURT: Look, Mr. Schurtman, barring the

statute of frauds, industry practice or not, it would have been possible for people able to contract to make an oral contract. I mean, I say barring the statute of frauds because I put that aside. Now, whether it was industry practice or not, the question is was there a contract made.

Now, I would urge you to put aside for the moment this question of industry practice, because I don't know that that helps me a lot. Suppose it wasn't industry practice. So what? If two people were capable of making a contract got together and make an oral contract and it wasn't barred by the statute of frauds they could make it, and I don't care whether it was industry practice to do it or wasn't industry practice. So the basic thing is were the people able to make the contract and did they make the contract.

Now, that is what we have to focus on, and --

MR SCHURTMAN: Your Honor, the industry practice is only to get you over the hurdle, the initial hurdle of disbelief the parties would think they made a multi million dollar deal without a written agreement. Once we get over that hurdle, then we focus on the issue of whether a deal was in fact made, I agree.

THE COURT: What do you mean, the initial

hurdle of disbelief? I have tried lawsuits about oral agreements before. You know, this is not the first time anybody dreamed up the idea of an oral contract. The question is was it made.

MR.SCHURTMAN: Okay.

THE COURT: We are focusing very hard on those factual issues. But the question is -- it is a very serious one to me, I assure you -- as to how long it is going to go on, the proof of this thing.

You know, to talk about another week -- as far as I am concerned, I am interested, if anybody wants to put him on, I am interested in hearing Alan Klein. I think he is an interesting link in this problem, because the testimony of both sides indicates that there was some reliance by Mr. Levy on Alan Klein.

Now, I would be very interested to know, and I think Alan Klein would be an important witness, to know to what extent Klein would say that Mr. Levy sought him as a source for advice as to the contents of the contract. I would be interested to know why this was done rather than going to the contracts themselves, and I would be interested to know what Mr.Klein held out to Mr. Levy as to the interpretation of those contracts and so forth, and exactly what Mr. Levy did in reliance on that and why he did

it and so forth, because that apparently was, according to both sides, was quite important on the final decision that Mr. Levy made.

So that is of great interest.

MR. PRETTYMAN: Your Honor, may I make two brief --

THE COURT: So why isn't he in here this afternoon?

MR. SCHURTMAN: Shall we try and get him in?

THE COURT: Good.

MR. PRETTYMAN: May I make two brief comments, your Honor?

THE COURT: Yes.

MR. PRETTYMAN: And they will be brief.

First of all, we have to put on the record that we disagree 100 percent with Mr. Schurtman's statement that you will find that there are minor conflicts.

We are going to demonstrate to you that there are major conflicts, not only between both sides --

THE COURT: Of course there are. I don't need that.

MR. PRETTYMAN: No. 2, sir,you are going to be applying New York law in regard to whether this oral contract could stand up as a matter of law as an oral contract,

and we are going to demonstrate to you that even taking the plaintiff's own version of this thing, there is no way that contract can meet the specificity that is essential under New York law to have an oral contract. All of the basic terms --

THE COURT: Look, Mr. Prettyman, what I am trying to get at is how do we get this over with?

MR.PRETTYMAN: I understand, sir,but Mr. Schurtman has made some statements to you and I just want the record to be clear that that is what we will demonstrate to you, because New York law is very hard on this oral contract business in terms of the parties reaching an agreement of the mind and an understanding about all of the basic terms of what is essential to that contract. We are going to demonstrate that not only is there a conflict between all of the witnesses, including their own, but even if you took their version, you could not have an oral contract under New York law in regard to this kind of a deal.

THE COURT: The thought of going into next week? That would be, you know 14 to 15 trial days on a question of whether there was a contract made on October 8, and that is an absurdity. It is a terrible thing. They ought to be a way to talk about this or simplify the issues in some way so we can get this resolved. There have been a lot more difficult issues tried in a shorter time than that.

MR. PRETTYMAN: I suggest that when Miss Pan's cross-examination is over that Mr. Levy be cross-examined and we make a motion at that time, because at that time we will have had the two participants in the October 8th meeting, Mr. Kahl and Mr. Levy, fully direct and cross-examined, and at that time we will be prepared to make a motion.

THE COURT: That is a thought. Mr. Schurtman would not have rested, because he contends that there are other witnesses relevant to that.

MR. PRETTYMAN: On the issue as to whether even under their own testimony as to what occurred at that meeting, it would be possible under New York law to have concluded whether an agreement had been entered into.

THE COURT: You are suggesting to finish the testimony of Miss Pang and then have Mr. Levy cross-examined,

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so his testimony is finished, and then you would have the two witnesses from the plaintiff's side as to that meeting fully examined and cross-examined?

MR. PRETTYMAN: That is right, and if you decide that even if you took their version that you could not specify an oral contract to meet New York law, then that would be the end of the case, because even if the plaintiffs have agreed both in writing and in court that that contract was the underpinning of the entire case, including even the antitrust claim.

THE COURT: What do you say to that, Mr. Schurtman?

MR. SCHURTMAN: When you say cross-examine Mr. Levy, I will be given a chance of some redirect?

THE COURT: Absolutely.

MR. SCHURTMAN: On the second point, we have not agreed that the oral contract is the underpinning for the entire case. What we have said is the oral contract is the underpinning for the breach of contract issue, but not the interference with contract issue. As I sit in the courtroom I hear more and more testimony that apparently Mr. Seider was playing both sides against the middle, and I would like to get into the interference.

THE COURT: You have given Mr. Bergen reason to

rise.

MR. SCHURTMAN: Mr. Klein will be here at two o'clock.

THE COURT: I think there will be merit in the idea of having some resolution as soon as enough evidence is in. I think it would advance us greatly to have a resolution on the issue of whether or not there was a contract. I think then we can go forward and see. If the Court finds there was a contract, then that obviously has certain legal implications, and we go forward on one basis. If the Court finds that there was not a contract, that will have its legal implications, and then it will be necessary to see what issues remain for trial or legal determination after that. What I am really attempting to do is to get a determination of the question of whether or not the plaintiff has proved a contract. And so if you gentlemen can figure out a way where we can bring this issue to a head as soon as possible, and I think Mr. Prettyman's suggestion has some merit, let us consider that. Let us finish up with Miss Pang and then let us alert Mr. Levy that he will be cross-examined.

MR. SCHURTMAN: Your Honor, will we put Mr. Klein on the stand at two o'clock? We have just checked with his lawyer. We don't control Mr. Klein. We have

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arranged with his lawyer to bring him down at two. If he can't take the stand --

THE COURT: In my mind I had assumed that he would testify, and maybe I have got the schedule fouled up. I did suggest bringing him in this afternoon. I would have him go on.

MR. SCHURTMAN: All right.

MR. PRETTYMAN: Under our view, regardless of what he says, in terms of our motion about what the parties agreed on October 8 he would not enter into it. But your Honor wants to hear him.

THE COURT: There is inevitably circumstantial evidence from later events. Let us hear him.

- -

M A Y P A N G , resumed the stand, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. BERGEN:

Q Miss Pang, when we left off yesterday I believe you testified that you had not seen Mr. Levy after you came back from Florida?

A That is correct.

Q Did you speak to him on the telephone?

A Yes.

Q Can you tell us how many times you spoke to him on the telephone?

A I spoke to him several times on different occasions.

Q Can you tell us briefly what some of the earlier telephone conversations were about?

A One of the telephone conversations was to let us know that he was back and "How is John?"

The second one was to tell us Julian, JOhn's son, his toys were being sent up from Florida. And a third, another one, was when he called to tell me that he was putting out the album, John's album.

Q When did Julian go back to England?

A Around the 8th or 9th of January.

Q When did Mr. Levy call you to tell you he was putting out the album?

A About the third or fourth week of January.

Q Was this after the meeting with Mr. Coury?

A Yes.

Q At the Sherry Netherlands?

A Yes.

Q How long after that?

A A few days.

Q Now, will you tell us what Mr. Levy said to you

in this conversation?

A He called up and he said to me, "May, just tell John that I am putting out the album. There is no hard feelings. If he wants to, he can re-mix just a couple of the songs, if he wants to. I respect his artistic ability."

And that was the end of the conversation.

Q Did he say anything about Mr. Lennon, that he could look at the album cover?

A Not that I can recall right now.

Q Did you report that conversation to Mr. Lennon?

A Yes.

Q What did Mr. Lennon say?

A He was just surprised and he asked me to get Mr. Seider.

Q Did Mr. Lennon or Mr. Seider ever say to Mr. Levy in your presence that EMI's permission was not necessary in order to put out the album?

A No.

Q Do you recall at the October 8th meeting an incident with respect to a watch?

A Yes.

Q Can you describe that briefly for us, please?

A There were about two or three conversations

going at the same time. I remember overhearing Mr. Bernard Brown commenting on Mr. Kahl's watch, because it was a digital watch and he had not seen one in England and he wanted to obtain one and Mr. Kahl says, "Well, I will give it to you right now."

THE COURT: This was when?

THE WITNESS: October 8th, at that October 8th meeting. And Mr. Brown said, "No, I would rather buy one."

And he said, "All right, we will try to arrange it with you; we will get together tomorrow and we will try to arrange to get you a watch."

2 Q Did Mr. Brown have this new watch the next day when you saw him at the Record Plant?

A Not to my knowledge.

Q Do you know when Mr. Brown went back to England?

A A few days after the October 8th meeting. I really don't remember.

Q Now, on the night that the tape was delivered, the tape copy, the 7-1/2 IPS tape copy was delivered to the Club Cavallero, was Mr. Crocker at the Club Cavallero?

A No.

Q Was anybody with you and Mr. Lennon that night other than Mr. Levy?

A No.

Q Do you know who Roy Cicala is?

A Yes.

Q Who is Mr. Cicala?

A Mr. Cicala is the owner and chief engineer at the Record Plant.

THE COURT: He is who?

THE WITNESS: He is the chief engineer and he owns the Record Plant.

Q Do you recall a time when you and Mr. Lennon had been at the Club Cavallero with Mr. Cicala?

A Yes.

Q Who was with Mr. Cidala?

A His wife.

Q Was that the night that the 7-1/2 IPS tape was delivered to the Club Cavallero?

A Not to my knowledge.

Q Do you recall when you and Mr. Lennon had dinner at the Club Cavallero with Mr. Cicala and his wife?

A Some time early December.

Q Miss Pang, I show you a document that has been marked as Defendants' Exhibit CH for identification and ask you if you can identify that?

A Yes.

Q Can you tell us what Defendants' Exhibit CH is?

A It is the dinner bill for Mr. Cicala and Mrs. Cicala and myself and Mr. Lennon.

Q Can you tell us what the date is On the bill, referring to the second page?

A December 3, 1974.

MR. BERGEN: I offer Defendants' Exhibit CH in evidence, your Honor.

THE COURT: I was distracted on something else; let's go back.

What was that again?

MR. BERGEN: Mr. Cicala and his wife had dinner with Mr. Lennon and Miss Pang on December 3, 1974.

THE COURT: You have not asked about the substance of that.

MR. BERGEN: All I asked her is did Mr. Cicala and his wife have dinner with them on the night that the 7-1/2 tape copy was delivered at the Club Cavallero?

THE COURT: Is CH admitted or not?

MR. SCHURTMAN: No.

MR. BERGEN: I just moved its admission.

MR. SCHURTMAN: I object to it. There is no proof that Mr. Cicala was there. All it shows is that Mr. Lennon was there.

THE COURT: I will receive it.

(Defendants' Exhibit CH was received in evidence.)

xx Q Miss Pang, the time that you and Mr. Lennon had dinner with Mr. Cicala and his wife was in December?

A Yes.

Q And it was not the night that the tape was delivered to the Club Cavallero?

A No.

Q Did you see Mr. Morris Levy the night, this December 3rd night?

A Yes.

Q Did you talk to Mr. Levy at all that night?

A We just exchanged hellos.

MR. BERGEN: Your witness.

CROSS EXAMINATION

XX BY MR. SCHURTMAN:

Q My name is William Schurtman. I am the attorney for the plaintiffs.

At the October 8, 1974 meeting at the Club Cavallero did you hear Mr. Harold Seider say anything?

A Say anything?

Q Yes.

A Yes.

Q Tell us what he said at that meeting?

A He said when Mr. Lennon turned to him, when talking about the TV mail order, I remember Mr. Lennon being interested, turned around and said it was a good idea, and he turned to Mr. Seider and said, "Can it be done?"

And Mr. Seider said, "We are still signed to exclusive contract at EMI."

Q YOu remember that distinctly?

A Yes.

Q Do you remember anything else that Mr. Seider said?

A It was just small talk basically. I just can't remember offhand.

Q Let me read to you from page 84 of your deposition which was taken on July 16, 1975.

THE COURT: Before you do that I would like to hear the testimony, if it can be read back, a couple of questions.

(Testimony read.)

THE COURT: What page?

MR. SCHURTMAN: Page 84, deposition of October 16, 1975, a question by Mr. Kanzer:

"Q Can you recall what, if anything, Mr. Seider said during the course of this October 8th meeting?

"A I really don't remember anything that Mr. Seider said."

Q Can you tell the Court what has happened in the intervening time to refresh your recollection as to what Mr. Seider said about EMI's consent?

A Reading over my deposition and starting thinking about the dinner.

Q Have you discussed this matter with Mr. Seider at all?

A No.

Q You have not ever since your deposition discussed this case with Mr. Seider?

MR. BERGEN: The case or this particular testimony?

THE COURT: Objection overruled.

Let's have the question again.

Q Did you ever discuss this case with Mr. Seider?

A No.

Q Never?

A Except how it was going.

Q Well, did Mr. Seider tell you about anything that was testified to in this case?

A No.

Q Is it your testimony, Miss Pang, that both

before your deposition was taken and after your deposition was taken and before this trial was held and since this trial has been held you have never discussed any aspect of this case with Mr. Seider, except to ask him how it is going?

A Yes.

Q Have you discussed it with Mr. Lennon?

A No.

Q Has anyone told you about anything that has been testified to in this case?

A I have talked to Mr. Davis and Mr. Mottau asking them the same questions, how it was.

Q You mean you spoke to Mr. Davis and Mr. Mottau about it?

A No.

Q You asked them what they had testified to?

A No.

Q All right. In any event, you are now telling the Court that no one has ever told you about any testimony that has been given by anyone in this case either in deposition or at the trial? Is that correct?

A Correct.

MR. BERGEN: Your Honor, can we make clear about Miss Pang, that the attorneys are included in that,

too. I am not sure that the witness understands that, your Honor.

MR. SCHURTMAN: Is that an objection?

THE COURT: What are you saying? Are you asking a question or are you objecting?

MR. BERGEN: I just think that it ought to be clear when he says anyone, he is not including just witnesses.

MR. SCHURTMAN: I will ask the question.

Q Did Mr. Bergen tell you what has been testified to in this case?

A No, he has not told me.

Q Is Mr. Bergen your lawyer?

A No.

Q He was your lawyer on the deposition, was he not?

A Yes.

Q Has any lawyer told you about any testimony that has been given in this case?

A No.

Q Have you ever given any statements to anyone, any written statements or affidavits?

A Any written affidavits?

Q Yes, about any of the events in this case?

A The only thing I signed is the deposition.

Q Miss Pang, do you have a habit of sometimes tuning out of conversations?

A Sometimes, yes.

Q Did you tune out of the conversation that took place on October 8th?

A No.

Q You were tuned in on that one, weren't you?

A Yes.

Q You testified on your direct examination that Mr. Lennon told Mr. Levy about problems with the Spector tapes, is that correct?

A Yes.

Q Did Mr. Lennon tell Mr. Levy whether any of the Spector tapes were salvageable?

A Yes.

Q Did he tell him which ones?

A He only said about four or five.

Q Did Mr. Lennon tell Mr. Levy that he was disgusted with the oldies project?

A I don't recall.

Q Did Mr. Lennon tell Mr. Levy that he had lost all desire to complete the oldies album? I am now talking about the first part of the meeting.

A I don't recall.

Q Did Mr. Lennon tell Mr. Levy that the timing was all off on a Rock and Roll album?

A I don't recall.

Q Did Mr. Lennon tell Mr. Levy that the delay created by the Spector difficulty made the album inappropriate to complete?

A Not to my knowledge.

Q Did Mr. Lennon tell Mr. Levy that he doesn't like

his work product to lie in the can?

A Yes.

Q You remember that?

A Yes.

Q Did Mr. Lennon tell Mr. Levy that he was an artist who wants his work product to get out?

A That I don't remember.

Q Did Mr. Lennon tell Mr. Levy before they got into the discussion about television merchandising that he had lost interest in the album?

A That I don't remember.

Q Let me read to you from the deposition of Mr. Harold Seider, who gave testimony in his deposition as to what Mr. Lennon told Mr. Levy, and see if that will refresh your recollection. I will start at line 14 on page 116, and this is Mr. Seider testifying.

"We then -- then John started to go into a discussion of his attempts, having now finished the Walls and Bridges album, to salvage those tapes. And he indicated again the fact that only six of the tapes were at best salvageable and that he was, you might say, disgusted with the project, that he had lost all desire. He thought that the timing was all off, the delay created by the Spector difficulty made an album such as this inappropriate

to complete.

"He felt that they weren't of top caliber as they were presently constituted. He mentioned the fact of what to do with the tapes because he was always -- as an artist he doesn't like his product, his work product, to lie in the can. He isn't a closet artist. He is an artist who wants to get out. And he discussed possibly -- initially he discussed various approached to this. He had lost interest in completing the album."

Does that refresh your recollection that Mr. Lennon told Mr. Levy that he was disgusted with the whole Spector project, the Rock and Roll album, and that he had lost interest in it?

A Vaguely I remember that.

Q Did Mr. Lennon also tell Mr. Levy that he felt the album had lost its momentum insofar as the rock and roll nostalgia was concerned?

A I don't recall.

Q Again, let me read to you from Mr. Seider's testimony.

THE COURT: Did Mr. Seider testify at the trial to that effect?

MR. SCHURTMAN: No. I haven't cross examined Seider yet, but this is his deposition testimony.

Mr. Seider testified --

THE COURT: I don't know what the utility is. I think it is quite plain that Mr. Seider has has a more detailed memory on some things than Miss Pang does. Do we have to have Miss Pang somewhow become a carbon copy of Mr. Seider or somthing ?

MR. SCHURTMAN: No, but I think it is remarkable --

THE COURT: Okay.

MR. SCHURTMAN: I think your Honor knows why I am putting this in. It has to do with Miss Pang's selective memory.

MR. BERGEN: Objection.

MR. GRUMBACH: I will object tothis argument.

THE COURT: You see how you stir these poeple up?

MR. SCHURTMAN: Once in a while I have to.

THE COURT: Okay.

MR.SCHURTMAN: On this last point, Mr. Seider testified that "With regard to the October 8th meeting, other than John's statement that he -- that because he felt that the album had lost its momentum insofar as rock and roll nostalgia and his desire that this not be reviewed or dealt with by the critics as a regular type," and so forth.

MR. GRUMBACH: Can you give us the page reference?

MR.SCHURTMAN: Yes. It is page 202.

Q Miss Pang, since you now vaguely recall that Mr. Lennon was disgusted with the project, can you tell us what rekindled his interest and made him enthusiastic again?

A I just remember --

MR. BERGEN: Has there been any testimony that his interest was rekindled and he was enthusiastic, your Honor?

MR. SCHURTMAN: I will ask Miss Pang.

Q Miss Pang, as the meeting progressed did Mr. Lennon become enthusiastic about the project and say he was just waiting to get into the studio so he could start working again, or words to that effect?

A No, he -- it was a suggestion thrown out. I don't remember who said "Why don't you go back into the studio to do" -- or maybe "I should go back into the studio to do some more songs."

I don't know who said it. I remember Mr. Lennon sitting there thinking about it and he says -- I remember him saying to Mr. Levy, in fact, saying "Well, I will have to think about, you know, if I want to go back into the studio, doing some more songs to complete it as

an album."

I remember Mr. Levy offering that he would pay for the costs and I remember myself saying to Mr. Levy that Capitol Records pays for all costs of the studio, so there would be no need for him to pay for it, because he was still signed to --

Q Did --

THE COURT: Wait a minute. Let her finish.

A You know, that Capitol, you know, is a subsidiary of EMI, and so they would be the one who would be paying for it.

And I remember Mr. Lennon just sitting there thinking about it.

He says, "I will have to go home and think about it."

Then he turned to Mr. Levy and says "Well, I've got to go home. I'm getting tired."

Q So it is your testimony that Mr. Lennon did not evince any excitement or enthusiasm and say words to the effect, "This is a great project, I can hardly wait to get started"?

A No, not to my knowlecge.

Q You have no recollection of that?

A No.

Q In other words, the meeting ended on a rather flat note, where Mr. Lennon was still basically disgusted with the project but said he would think about it? Is that your testimony?

MR. PRETTYMAN: I object to that.

MR. BERGEN: Objection, your Honor.

MR. SCHURTMAN: This is cross examination.

THE COURT: I will allow it.

If you understand the questions and can answer, fine. If they are too vague for you you say that. Can you answer that question?

A I wouldn't say Mr. Lennon was disgusted and I wouldn't say Mr. Lennon was overjoyed. I am just saying that he was -- he took it into consideration when he left.

Q All right. Do you recall Mr. Lennon saying that he was interested in doing the album on television because that would bypass the critics? Do you remember that part?

A Yes.

Q During the conversation did Mr. Levy state to Mr. Lennon that his company, Adam VIII, by name, handled television promotions of this type?

A I remember him saying -- Mr. Levy saying that Adam VIII was his company and he put out the records. I remember him telling Mr. Lennon as to inform him that that

was his company that was on TV.

Q But Mr. Levy did say that ADam VIII handled television promotions?

A That I don't recall.

Q Let us just pin that point down.

Page 55 of your deposition, Miss Pang, you said:

"Morris explained that he had access to all the TV's, to do the mail order, and he explained that all the Adam VIII's, the oldies on TV, was all his, all his timespot, and John said "'Oh, that's an interesting idea. Maybe we can do that, but we don't know if we can.'"

Does that refresh your recollection as to that part of the conversation?

A Yes.

Q Miss Pang, during the meeting on October 8th was there any discussion among the various participants as to the song titles to be included in the Lennon album that he was going to work on?

A That I don't recall.

Q You have no recollection of people trading song titles back and forth and making suggestions as to what titles should be used?

A Right now I can't remember.

MR.GRUMBACH: Your Honor, I would like to object

because what he does is first he asks a sort of a compound question, then he says "Do you remember song titles for the Lenon album?" When the witness says "No," then he says "Well, don't you remember the discussion of song titles?" I think that is unfair cross examination.

THE COURT: I don't see that --

MR. GRUMBACH: Because he is suggesting to the witness that the discussion of song titles had to be tied to the Lennon album.

THE COURT: He is just asking a question and he asked another question.

MR. GRUMBACH: It is a misleading question, your Honor.

THE COURT: No, I don't agree.

Go ahead.

Q Was there any discussion on October 8th, in the latter part of the meeting, about where and when Mr. Lennon would finish the oldies album?

A No.

Q Let me read to you from page 90 of your deposition. Question by Mr. Kanzer.

"Q Was there any discussion as to when he might finish the album?

"A When? He wanted to go and finish it off

soon. He didn't like to leave the other songs just lying around."

Does that refresh your recollection that Mr. Lennon wanted to finish the album at that point and firnish it soon?

MR. BERGEN: That wasn't the question,your Honor.

MR. PRETTYMAN: That is correct. I was just going to point out the same thing.

The question was in terms of when.

THE COURT: All right. Do you recall him saying that he wanted to finish it soon?

THE WITNESS: Yes, but not then.

THE COURT: I am sorry?

THE WITNESS: Not at the October 8th meeting, your Honor.

THE COURT: You don't recall --

THE WITNESS: I don't recall it being said then.

THE COURT: All right. When do you recall it being said?

THE WITNESS: It was said after, when he told Mr. Levy that he would have to think about if he, you know -- you know, finishing some songs, he would have to go home

and think about it, and a few days later, you know, he says "I will go in to do it, to complete the songs for the album."

THE COURT: Okay.

Go ahead, Mr. Schurtman.

Q Did Mr. Levy or Mr. Kahl offer to assist Mr. Lennon -- and when I say offer I mean at the October 8th meeting -- in completing the album?

A Yes.

Q In what way did they offer to assist him?

A If Mr. Lennon needed lead sheets and if Mr. -- Mr. Levy said, you know, if he wants to pay for the recording cost. which I have answered before that he didn't need to.

Q When you say recording cost, what do you mean by that, the studio recording cost?

A Studio recording cost, yes.

Q Mr. Leby offered to pay for that?

A Yes, and I said he didn't need to because Capitol Records did that.

Q But you do remember that Mr. Levy and Mr. Kahl offered at the October 8th meeting to supply lead sheets?

A That I really don't remember.

Q You said a moment ago that they did.

A Yes, I know. I am just combining two dates. I am not sure on that one, as far as lead sheets, no.

Q You did testify at page 91 of your deposition:

"Q Did Mr. Levy or Mr. Kahl offer to get sheet music or original recordings for Mr. Lenn of any songs that he might consider including in the album?

"A I don't think it was at the October 8th meeting."

This reference to original recordings, does that refresh your recollection that Mr. Levy may not have been talking about recording studio costs but about getting old rock and roll records so Mr. Lennon could listen to them?

A I am sorry, I didn't --

MR. SCHURTMAN: Would you read the question back, please.

(Question read.)

Q That was not about the recording cost, no. Original recordings meaning the records, if you are --

Q Yes, but what did Mr. Levy or Mr. Kahl offer to do for Mr. Lennon?

MR. BERGEN: She just testified to it, your Honor.

THE COURT: Just a minute.

A As I said, Mr. Levy had offered to pay for the

recording costs if Mr. Lennon wanted to go back into the studio.

Q I believe you testified on your direct that Mr. Bernard Brown was at the meeting on October 8th at Club Cavallero.

A Yes.

Q Had you seen Mr. Brown earlier that afternoon?

A Yes.

Q Had you seen him at the Record Plant that afternoon?

A That I don't remember.

Q You have no recollection of seeing Mr. Brown at the Record Plant?

A Not to my knowledge. I couldn't remember.

Q Do you recall seeing Mr.Brown at Mr. Lennon's apartment before you went out to dinner?

A I am not quite sure.

Q You have no recollection one way or the other?

A No.

Q At page 46 and 47 of your deposition you testified -- I guess I will have to read the whole question:

"Q Do you know whether Mr. Lennon either met with or had any telephone calls with Mr. Brown between approximately October 6th or whatever the date of Mr. Brown's

arrival in New York and prior to the October 8th meeting which you stated Mr. Brown attended with Mr. Levy at Club Cavallero?

A No, not prior to October 8th.

Q That is, you don'tknow of any or that none took place?

A None took place. He only met Mr. Brown the evening of October 8th."

Does that refresh your recollection that you did not meet Mr. Brown before the eveing of October 8th?

MR. PRETTYMAN: I don't see why that is inconsistent in any way with the testimony, your Honor.

MR. BERGEN: What is that inconsistent?

MR. SCHURTMAN: Because on her deposition she said that she had not met Mr. Brown, now she is saying she isn't sure whether she did or didn't, she can't remember.

We have had some interesting testimony from Mr. Brown in the meantime and I would like to pin down that point.

MR. BERGEN: The question was whether they met before they went out to dinner, not whether they met before the evening of October 8th.

MR. SCHURTMAN: I think the record speaks for itself.

THE COURT: Miss Pang, on this question of Bernard Brown, you recall going to dinner with him?

THE WITNESS: Yes.

THE COURT: At the Benihana?

THE WITNESS: Right.

THE COURT: Do you recall whether you had seen him earlier in the evening or the day, that is, do you recall whether you saw him before the Benihana dinner?

THE WITNESS: That is what I am not sure of. I don't remember if I made it by phone or did I actually see him to make it for that evening dinner.

THE COURT: Allright.

MR. GRUMBACH: Your Honor, at page 47 of the witness' deposition there is an answer.

THE COURT: Can we go ahead, Mr. Schurtman?

MR. SCHURTMAN: Sure.

Q You testified that on October 9, 1974 at the Record Plant Mr. Lennon only played the two Big Seven songs for Mr. Levy. Do you recall that?

A Yes.

Q Are you sure he didn't play the rest of the Spector tapes for Mr. Levy?

A That I really can't remember. All I remember is those two songs.

Q Was Mr. Bernard Brown at the Record Plant on October 9th?

A That I don't remember.

Q Do you know who Mr. Lew Garlick is?

A Yes.

Q Was Mr. Garlick at the Record Plant on October 9th?

A That I don't remember.

Q Miss Pang, I show you Exhibit 25-A,which is a cassette which has on it the handwriting "John Lennon 1-7." Have you ever seen this before?

A Yes.

Q Do you know whose handwriting that is?

A No.

Q When did you see that cassette the last time?

A It was in Mr. Bergen's office.

Q When?

A I don't remember.

Q This same cassette?

A I think so.

MR.BERGEN: A couple of months ago, Mr. Schurtman, when Mr. Kanzer let me borrow it for a week or so..

THE COURT: What is 25-A again? Is this the

original --

MR. SCHURTMAN: That is the cassette of the Spector tapes.

THE COURT: That was given to Mr. Levy?

MR.SCHURTMAN: Yes.

THE COURT: Okay.

Q Had you seen it before you saw it in Mr. Bergen's office a couple of months ago?

A That I don't remember.

Q What were you doing in Mr. Bergen's office a couple of months ago?

A It was going over the -- for the trial.

Q You were going over the testimony for the trial, right?

A The testimony.

Q Did you deliver a cassette containing Spector recordings to Mr. Levy?

A Not to my knowledge.

Q Do you know whether anyone did?

A A cassette?

Q This cassette.

A No, I don't remember.

Q You have no recollection?

A No.

Q Do you know which songs are on this cassette? I don't mean by name, but are those the Spector songs?

A I will have to hear it. I don't --

Q Did you listen to the cassette when you were in Mr. Bergen's office?

A I heard -- I think I heard couple of songs, yes.

Q Do you remember that these were the original Spector songs?

A I --

MR.GRUMBACH: Your Honor, I think we should clarify what Mr. Schurtman means by the original Spector songs, because there has been some testimony already about perhaps a difference of understanding as to the meaning of the term original.

MR. SCHURTMAN: I will rename the question.

Q Do you recall that these were the Spector songs on that cassette?

A You mean the one that Mr. Spector produced?

Q Yes.

A Yes.

Q Miss Pang, I show you Plaintiffs' Exhibit 23. Have you ever seen this exhibit before?

A No.

Q You have no recollection of seeing it?

A No.

Q Let me show you Plaintiffs' Exhibit 24. Have you ever seen this before?

A Yes.

Q Did you type the typewritten portions of Exhibit 24?

A I believe so.

Q When did you do that?

A When did I do it? Some time in October, the middle of October.

Q Why did you do it?

A It was a list of songs that Mr. Lennon wanted to obtain, a list of lead sheets Mr. Lennon wanted to obtain.

Q Did you copy the songs from anything?

A Did I copy the songs from -- I don't understand.

Q When you typed out the songs did you have something in front of you from which you copied the titles?

A What Mr. Lennon had written down in his handwriting.

Q He had given you a handwritten list?

A Right.

Q Do you know on what he based the handwritten

lit?

A What songs that he wanted to do.

Q Let me show you Plaintiffs' Exhibit 23 and ask you to compare -- just very quickly, you don't have to do it one by one -- the songs on 24 and the songs on 23, and I suggest to you that they are listed in the same order.

Does that refresh your recollection --

A No.

Q -- that you had 23 available to you at that point?

A No.

Q What did you do with this sheet after you had typed the songs on it?

A I gave it to Mr. Lennon to go over it to be sure those were the songs.

Q I notice some checkmarks and squiggles and circles next to certain songs. Did Mr. Lennon make those?

A I don't remember.

Q The handwritten songs at the bottom, Miss Pang, are those in Mr. Lennon's handwriting?

A Yes

Q And the reference to "This stuff in the can," is that in Mr. Lennon's handwriting?

A Yes.

Q Does that refer to the Spector tapes?

A Those were the songs that he recorded, yes.

Q After you --

THE COURT: Wait a minute. Read the last question and answer.

(Record read.)

THE COURT What are you referring to? I don't have that exhibit before me.

MR.SCHURTMAN:I am sorry, your Honor. These were the songs that had already been recorded under Spector's production.

THE COURT: Meaning the handwritten --

THE WITNESS: Yes.

MR. SCHURTMAN: Yes, except for Ya Ya. Mr. Kahl testified that he added that.

THE COURT: All right.

Q Did you or Mr. Lennon hand this list to Mr. Levy at some point?

A At some point. I don't remember.

Q Would it refresh your recollection if I suggested that this was handed over to Mr. Levy at a meeting at Club Cavallero at which you also discussed holding rehearsals at the farm?

A Yes, yes.

Q That refreshes your recollection?

A Right.

Q What was the purpose of handing this list to Mr. Levy?

A Mr. Levy had offered to help Mr. Lennon to get some lead sheets that he wanted.

Q And the list was intended to show Mr. Levy what lead sheets he was to furnish?

A Yes, because he wanted to know -- Mr. Levy wanted to know what Mr. Lennon wanted to do, give him a list of songs, and so Mr. Lennon had -- well, I had typed it out so I would be able to give it to him.

Q Do you happen to know, Miss Pang, if the songs on this list are songs owned by Big Seven?

A No, I don't.

Q Do you know of any reason why Mr. Levy had offered to Mr. Lennon and why Mr. Lennon had accepted the offer to furnish lead sheets for these songs?

A Mr. Lennon had taken -- by this time Mr. Lennon had wanted to do -- finish up the album, the Rock and Roll album, and Mr. Levy had wanted to see Mr. Lennon finish it, so he had offered to help Mr. Lennon

Q Did Mr. Levy and Mr. Kahl furnish you and Mr. Lennon with lead sheets, sheet music and old records?

A Yes.

Q Had Mr. Levy or Mr. Kahl or anyone from Big Seven given you the same type of assistance prior to October 8, 1974 or offered to give it to you?

A No.

Q Did you know anything about the original settlement of the Big Seven lawsuit?

A Just a vague --

Q All right. Were you aware of the fact that Mr. Lennon was to record three Big Seven songs?

A Something like that.

Q In connection with carrying out that settlement had Mr. Levy or anyone connected with Big Seven ever offered to give you lead sheets, music, old recordings, and so on?

A When, prior to October --

Q Prior to October 8th.

A No.

Q You testified yesterday that when you and John Lennon and Mr. Levy drove up to the farm for the rehearsals a musician named Eddie Mottau was in the back seat.

When you had your conversation with Mr. Mottau the other day, when he told you what happened at the

trial, did he tell you he had testified he was in the back seat?

A No.

Q How did you know that he was in the back seat?

A I started to think back after reading my deposition that there was somebody else -- I remember going downstairs into the lobby and waiting for Mr. Levy to arrive, that Mr. Mottau had come in and was waiting and he was tired and he was sitting in the lobby while we were waiting for Mr. Levy to pick us all up to go up to the farm.

Q Miss Pang, you do recall that at page 104 of your deposition you gave the following testimony:

"Q Did you drive up with Mr. Levy and Mr. Lennon?

"A Yes.

"Q Was anyone else in the car?

"A No.

"Q Mr. Levy do the driving?

"A Yes.

"Q Were there any discussions in the car?

"A There probably was, but I don't remember any of the details."

Now, when did you remember for the first time that Mr. Mottau was in the car?

MR. PRETTYMAN: I object, your Honor. She has just explained that.

MR. SCHURTMAN: She didn't say we.

THE COURT: Overruled.

Q When was that?

A When I went back to read my deposition.

Q Which was back in July or August?

A No. I didn't get my deposition till much later.

Q Can't you tellus when you read the deposition?

A Read my deposition on Thursday of last week or Wednesday of last week..

Q And did you at that point tell Mr. Bergen or one of the other lawyers there was an error in your deposition?

A No.

Q How many hours a day, Miss Pang, did the musicians rehearse at the farm?

A Approximately four or five yours.

Q Could it have been more than six?

A Pardon me?

Q Could it have been more than six hours a day?

A I don't think so

Q At page 106 of your deposition:

"Q Would you say that it was generally more than six

hours a day?

A Sometimes more, yes."

Leaving aside the musicians, Mr. Lennon, Mr. Levy, Mr. Kahl and yourself, can you tell us the names of some of the other people who were at the farm, visitors?

A Mr. Chapman and his son, Mr. Jerry Masucci, Mr. Norman Sheresky, Mr. Garlick's daughter and son-in-law had dropped by, and a Judge from -- a local Judge.

Q Miss Pang, I show you Exhibits 26-A and 26-B. Have you ever seen these before?

A No.

Q You have never seen them at all?

A No.

Q Did there come a point when certain tapes of Mr. Lennon's recordings were delivered to Mr. Levy at the Club Cavallero?

A Yes.

Q Can you tell us on what date that happened?

A No, I can't. I don't remember.

Q Do you remember the month in which it happened?

A I believe it was in November.

Q Would you describe the circumstances?

Q Mr. Lennon had finished my remixing and we went over to Mr. Levy to see Mr. Levy at the Club Cavallero

to tell him that we had -- he had ordered a copy of the tape for him to listen to and the tapes were delivered there.

Q Were you there when the tapes were delivered?

A Yes.

Q In what form were they delivered?

A They were in an envelope and the gentleman who delivered it, Tom from the Record Plant, had informed us that it was split on two reels because they couldn't get all the songs on.

Q I see.

But were the tapes in an envelope surrounding whatever the tapes were in?

A Yes.

Q Was the envelope opened that evening?

A I don't remember.

Q So you don't know whether it came in two reels or one reel?

A I stated that Tom, the Record Plant employee, had informed us, because he was the one who did the tape, that he said it was split in two reels.

Q But you don't know whether these two individual boxes which are marked 26-A and 26-B were or were not in that envelope that evening?

A They were in an envelope given to Mr. Levy.

THE COURT: We will take a short break.

(Recess.

(Continued on next page.)

BY MR. SCHURTMAN:

Q Miss Pang, when the two 7-1/2 inch tapes were delivered to Mr. Levy did you think that Mr. Lennon had completed them?

A No.

Q Did Mr. Lennon think they were complete?

A No.

Q Let me read you an answer you gave on your deposition, page 130:

"Q At the time these tapes were delivered to Mr. Levy what stage in the recording process have been arrived at, that is, had all re-mixing been done, or, if not, at what stage had the recording process reached?

"A At the time that the tape was given to Mr. Levy we thought it was almost a completion, we thought it was completed."

And then you went on to say:

"But, in actuality, it was not, because Mr. Lennon went back to the studio to listen to it and was not satisfied with what was done."

Now, when did Mr. Lennon go back to the studio to listen to the --

MR. GRUMBACH: Could we have the rest of this

colloquy read?

THE COURT: Is there more?

MR. SCHURTMAN: If it bears on this.

At page 30:

"Q Can you tell us whether you were present during any further sessions on which work was done on the performances included on that tape subsequent to the time the tape was delivered to Mr. Levy?

"A Yes.

"Q Can you tell us what was done during these sessions?

"A We remixed somme of the songs. Two of the songs were taken out and things were added.

"Q Which two songs were deleted?

"A Angel Baby and Be My Baby."

MR. GRUMBACH: Just continue through.

MR. SCHURTMAN: Let me ask you one prelimary question.

Q When were all these things done, the remixing, he deletion, and so on?

A January and February, January, because he still had to master it, which is the last step.

Q Was all this done during the mastering process?

A Yes.

Q It was not done in November, when you say the tapes were delivered?

A When the tapes were delivered the remixing had been done. He thought it was finished in the sense of remixing, but he still had one more step to go.

Q So at the time the tapes were delivered Mr. Lennon thought they were finished, except for the mastering?

A Which is the important step?

MR. GRUMBACH: I won't press the Court that Mr. Schurtman has not read the rest of it.

THE COURT: It has to do with what was done later.

MR. SCHURTMAN: We concede he did a lot in February.

THE COURT: Yes.

BY MR. SCHURTMAN:

Q Now, Miss Pang, how long have you been associated with Mr. Lennon?

A Since December of 1970.

Q In the several years you have been associated with him do you know of any other instance where Mr. Lennon ever gave a 7-1/2 IPS tape of his performances to anyone other that EMI, Capitol or Apple, before the release of the finished album?

A Not to my knowledge.

Q Now, going back for one moment to the lead sheets and sheet music and records that were furnished to you by Mr. Levy and Kahl, do you recall whether these lead sheets pertained only to songs owned by Big Seven or did they also cover songs owned by other publishers?

A I think there were songs owned also by other publishers.

Q Do you know when Mr. Levy furnished sheet music, lead sheets and old records for songs owned by other publishers?

A As I have said before, he wanted to help Mr Lennon finish the songs that he wanted to do, and Mr. Levy said, "I can get any lead sheet that you want."

Q You testified on direct that you know Mr. Frank Crocker?

A I met him.

Q Were you present at the Club Cavallero when Mr. Lennon had a conversation with Mr. Crocker?

A Yes.

Q Do you remember on what night that occurred?

A No.

Q Was there a discussion of the oldies album between Mr. Crocker and Mr. Lennon?

A I don't remember.

Q At page 138:

"Q Do you recall whether there was any discussion at this meeting -- this is at the meeting with Mr. Crocker -- about the oldies album that Mr. Lennon was either then recording or had just completed recording?

"A I think Mr. Lennon had said something about the oldies album."

Does that refresh your recollection that the two were discussing the oldies album?

A No.

Q Do you recall Mr. Lennon giving Mr. Crocker his private telephone number?

A It was his night line number.

Q He gave that to Mr. Crocker on that occasion?

A Yes.

Q When you were down in Florida with Mr. Lennon do you recall meeting Mr. Garlick?

A Yes.

Q Do you know whether Mr. Garlick and Mr. Lennon had any discussion about the oldies album in Florida?

A Not that I can recall.

Q Page 173 of your deposition you referred to

meeting Mr. Garlick, and then the question:

"Q Can you remember what was discussed?

"A Mr. Levy asked John how it was going, was it finished, and Mr. Garlick asked the same thing."

Does that refresh your recollection?

A Strangely, yes.

Q Now, in connection with that telephone call that Mr. Levy made to you on January 30, 1975, when he told you he was coming out with the Lennon album, could you tell us again very briefly what Mr. Levy said? I just want to focus on one point.

A Okay. He said, Tell John I am coming out with the album and there is no hard feelings, and that if he wants to remix or change anything, that I respect his artistic ability."

Q Did Mr. Levy also say anything about letting Mr. Lennon do anything about the art work?

A I don't remember.

Q Well, let me refer you to page 200 of your deposition, line 12, that Mr. Levy said to you:

"I am putting out the oldies album," and there was nothing personal, and he said if Mr. Lennon wants to change or remix the tape or do something with the art work, that he should let him know, because he respected

Mr. Lennon's artistic ability.

Does that refresh your recollection that art work was mentioned?

A Vaguely.

Q Now, when you use the word "art work" in your industry, are you referring to the cover of the album?

A Usually, yes.

Q Did you advise Mr. Lennon of this conversation?

A Yes.

Q Miss Pang, I take it you are no longer employed by Mr. Lennon or any of his companies?

A Correct.

Q Are you still receiving compensation directly or indirectly from Mr. Lennon or any of his companies?

A No.

Q Were you at one time employed by Lennon Music?

A Yes.

Q Is Lennon Music a corporation?

A I don't know if it is a corporation.

Q You don't know whether it is a corporation?

A No, I only know it is John Lennon doing business as Lennon Music.

Q You have never seen INC. behind it or anything like that?

A No.

Q Do you play any musical instruments, Miss Pang?

A No.

Q I have here several A. F. of M. contracts pertaining to the album which is the subject of this case.

MR. PRETTYMAN: Which album?

MR. SCHURTMAN: The oldies album that Mr. Lennon was preparing for somebody.

THE COURT: Go ahead.

MR. SCHURTMAN: I have marked these Plaintiffs' Exhibits 87-A through 87-E for identification.

Q Have you seen these before?

A Yes.

Q I have circled certain items in red in order to make it easier to follow.

In the first place these contracts list you as a musician and they show you were being paid a salary as a musician.

Can you explain that?

A I was a contractor on these.

THE COURT: Are these documents in any way in this case?

Are they marked for identification?

MR. SCHURTMAN: I have marked them for identification.

THE COURT: May I see them for just a moment. I am not following this.

MR. SCHURTMAN: Yes, surely.

THE COURT: Can you ask the witness some questions about these, as to what they represent?

Q Miss Pang, what are these forms?

A They are A.F. of M. contracts, musician contracts.

Q And they cover the scales being paid to musicians?

A Right.

Q I started to ask you, and I think you started to answer why you were listed as a musician when you do not play any musical instruments?

A Outside of a tambourine.

THE COURT: Why are you listed on those contracts?

THE WITNESS: I am the contractor.

Q In other words, you arrange for the other musicians to work?

A Yes.

Q Do you have a union card as a musician?

A As a tambourine percussionist.

Q Now, I notice that you are listed care of ATV.

Who is ATV?

A ATV is a music publishing company.

Q Is Mr. Lennon connected with ATV?

A ATV publishes Mr. Lennon's music.

Q Did ATV have anything to do with this particular album?

A No.

Q Did you witness Mr. Lennon signing this under the words Apple Records? It says employer's name Apple Records, and underneath Authorized Signature, and then there appears to be John Lennon's signature?

A Right.

Q Is that his signature, as far as you know?

A Yes.

MR. SCHURTMAN: I would like to offer these documents in evidence, 87-A through E.

MR. BERGEN: Objection on the grounds of relevance.

MR. PRETTYMAN: I have not seen them.

MR. SCHURTMAN: You furnished them to us.

THE COURT: Is there anything else on your cross-examination of Miss Pang?

MR. SCHURTMAN: I have one other question.

THE COURT: All right, we will take that.

BY MR. SCHURTMAN:

Q Miss Pang, how many songs does Mr. Lennon normally put on his albums?

A Ten or so.

Q You knew that he was recording 15 or 16 songs on this particular album, did you not?

A Yes.

Q Can you tell the Court why he was planning to put 15 or 16 songs on this album?

A I know a couple of the songs were combined into one. He did a medley.

Q Aside from that medley?

A I don't know.

Q Isn't a fact that he was recording 15 or 16 songs because he was planning to put this album out for television?

A I don't recall.

Q Do you recall any discussion of the number of songs that had been put on the album at the October 8th meeting of Cavallero?

A I don't recall.

Q Do you recall Mr. Levy saying he would like ot have 20 songs for the TV package and Mr. Lennon saying he could not put that many on, and they finally decided on 15

or 16 songs?

A I don't recall.

MR. SCHURTMAN: I have no further questions of this witness.

THE COURT: Anything else?

MR. PRETTYMAN: I have just a few questions.

THE COURT: How about these exhibits, 87-A through 87-E? Mr. Bergen has objected.

What is your position, Mr. Prettyman?

MR. PRETTYMAN: I object.

MR. GRUMBACH: I object.

THE COURT: I overrule the objections and receive them.

(Plaintiffs' Exhibits 87-A through 87-E were received in evidence.)

xx THE COURT: Do you have a question, Mr. Prettyman?

REDIRECT EXAMINATION

XX BY MR. PRETTYMAN:

Q You recall that it was on January 30 that you received word from Mr. Levy that he was going to put out the album?

A Yes.

Q Prior to January 30 did you contact Capitol or EMI at any time about Mr. Levy coming out with this album?

A No.

Q Did you contact them about even having any interest in coming out with the album?

A Me? No.

Q At the end of the October 8th meeting was it your personal understanding that if any deal of any kind was to be proposed with Mr. Levy the permission of EMI would first have to be obtained?

A Yes.

MR. SCHURTMAN: Objection.

THE COURT: Sustained and stricken.

It is leading.

MR. PRETTYMAN: I have no further questions.

THE COURT: Mr. Grumbach?

MR. GRUMBACH: I have no questions.

BY MR. BERGEN:

Q Those contracts that Mr. Prettyman just showed you, the A.F.M. contracts, where were they sent after they were signed?

A They were given to Capitol Records.

Q Why were given to Capitol Records?

A Because Capitol Records pays the bills and the musicians.

MR. BERGEN: I have no further questions.

ms14 Pang -

THE COURT: You may step down.

(Witness excused.)

THE COURT: Now, are we going to have cross-examination of Mr. Levy?

MR. BERGEN: Yes.

THE COURT: All right. Let's go ahead.

- -

M O R R I S L E V Y , called as a witness, having been duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. BERGEN:

Q Mr. Levy, you testified before Judge MacMahon to the effect that the record album was a rush project? Do you recall that?

A I believe so, yes.

Q You also testified at pages 203 and 237 and 238 of this trial that John Lennon wanted to do it as quickly as possible and that Mr. Lennon said that? Do yo recall that?

A Said it and did it.

Q Mr. Levy, I read You from your deposition in this case, the transcript of the day of June 2, 1975, page 198:

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"Q I believe in your complaint you indicated that he said or he asked rather that the recording and promotion be done as quickly as possible?

"I believe you indicated a few moments ago that those remarks were made at the October 7th or 8th meeting. Did he give you any reason that?

"A He didn't say 'We all agree that this should be done as quickly as possible.'

Do you recall that testimony in your deposition?

A I don't understand what you just read.

May I see that?

Q Yes. Then you went on to say:

"I don't think he said it that way, not Spector. You are misquoting No. 14. I think that came about in discussions when would be the right time for marketing and everything else and we said that it should be ready by January, with conversations and everything. The big campaigns usually started the 1st of February. It is Woolworth's sales policy to unloan the merchandise out of the store on January 30."

And then there is some statement by Mr. Prettyman and another question:

"Q Did he himself express any particular

interest in having it done as quickly as possible?

"A His enthusiasm.

"Q Other than that?

"A No, no."

A His enthusiasm and the fact that he did do it quickly when he started working immeidately.

Q I read to you from page 203 in your testimony at the trial:

"Q Did you tell Mr. Lennon in words or substance that you wanted to get it done as quickly as possible?

"A Yes, so did he."

And then at 237 --

THE COURT: Why do you read the testimony at this trial? Haven't I heard that before?

MR. BERGEN: The witness just said he didn't say that Mr. Lennon said it was going to be done as quickly as possible.

THE WITNESS: The question --

THE COURT: Just a moment, Mr. Levy.

MR. BERGEN: I would like to inquire into that.

THE COURT: Are you going to argue with him?

Come on, Mr. Bergen, let's get on. This is really not helpful.

MR. BERGEN: Your Honor --

THE COURT: Please ask another qudstion and get to another point. I don't want you rereading his earlier testimony and arguing with the witness. That is not cross-examination.

Do you have any more points to make?

BY MR. BERGEN:

Q Mr. Levy, did you talk to Alan Klein at any point in October of 1974? After October 8?

A I seem to believe that Alan Klein came in on the night of October 9th to the party. I have a feeling he was there. And I prombably did speak to him a couple of time in October -- let me see -- the question was from (›ober to January? I seem to believe I called him once about a rate for one of the songs that was on the package. I seem to believe I called him for a rate, and I think one of his first ones, one of the songs on the album, which would have been right after the 9th or 10th, in this area there, during that first week or so. I don't believe I spoke to him too much after that until around the end of January.

Q In this conversation, that telephone conversation with Mr. Klein did you discuss with Mr. Klein anything about what rights The Beetles or Mr. Lennon had with respect to

their recordings?

A I may have. I am not sure. I had discussed the rights of The Beetles and their recordings with Mr. Klein a few years prior to that, when Mr. Klein called me about making a Beetle package for television, and I worked with Mr. Klein on it for a few weeks, and at that point there he told me that he had the rights to make a mail order package, a package which subsequently came out. I believe the reason he wanted the package at that time was to stop the bootleggers from bootlegging Beetle products. They were advertising on television. And I worked with him to make that package i '72 or '73. I could not be prec ise, but it was a few years prior to this, and that is when he told me that Apple had the rights for the mail order of Beetle products.

MR. BERGEN: I move to strike the witness' answer.

THE COURT: Motion denied.

Q You don't have any specific recollection of discussing that subject with Mr. Klein on the telephone when you called him in October 1974?

A It is quite possible, Mr. Bergen, that it did come up during that disc ussion when I asked him for the rates, I believe I told him it was for the Lennon package,

and it is quite possible that it might have come up, but I was aware of this earlier in previous discussions with Mr. Klein during that other period, as I testified.

Q When was the next time you spoke to Mr. Klein?

THE COURT: Did the earlier package come out?

THE WITNESS: Yes, sir, not on TV, it came out as a regular Capitol release, because at that time I believe the piracy laws got stronger and it was not a problem any more. Actually, Capitol and many record companies at that period, your Honor, were frustrated in their attempts to stop bootleggers who were advertising on television.

THE COURT: It came out, but it came out as --

THE WITNESS: As a regular package.

THE COURT: By Capitol?

Okay. Go ahead.

BY MR. BERGEN:

Q Now, when was the next time you spoke to Mr. Klein?

A I believe it probably was after Mr. Seider left my office in January.

Q Mr. Levy, I read you from your deposition, page 334:

"Q During this period of time were you having any conversations in person or by phone with Alan

Klein?

"A Towards the end.

"Q What do you mean 'Towards the end'?

"A Around maybe late - early February.

"Q Late January or early February?

"A Yes.

"Q And how often were you having those conversations with him?

"A I spoke to him a few times.

"Q Every day?

"A No, not every day.

"Q Every few days?

"A Maybe once a week. Then after the action started, after we were turned down, I spoke to him three or four times in one week."

Does that refresh your recollection?

A That is exactly what I said.

Q May I finish the question?

A I am sorry.

Q Does that refresh your recollection that you spoke to Mr. Klein before you were turned down by Mr. Seider?

A I don't believe it says that in what you just read. I said at the end of January, and I believe that

is what I just testified to.

THE COURT: Well, now, look, the conversation where you say Mr. Seider left your office is the conversation where Mr. Seider came and said --

THE WITNESS: At the end of January.

THE COURT: Had you spoke to Mr. Klein between this October time and the time when Mr. Seider came in and before Mr. Seider came in?

Do you understand?

THE WITNESS: Yes, si.

THE COURT: Had you spoken to Mr. Klein?

THE WITNESS: I don't believe so, no, except the one period I spoke to him about the copyright.

THE COURT: You covered that.

THE WITNESS: And that is what he just read, too.

THE COURT: Is that inconsistent with the deposition?

MR. BERGEN: Yes, it is.

THE COURT: I just didn't get that.

MR. BERGEN: Let me read to you again very quickly --

"Q And how often were you having those conversations with him?

"A I spoke to him a few times."

THE WITNESS: You started later now.

THE COURT: Just slowly read it.

MR. BERGEN: "Q During this period of time, were you having any conversations in person or by phone with Alan Klein?

"A Towards the end.

"Q What do you mean 'Towards the end'?

"A Around maybe late -- early February.

"Q Late January or early February?

"A Yes.

"Q And how often were you having those conversations with him?

"A I spoke to him a few times.

"Q Every day?

"A No, not every day.

"Q Every few days?

"A Maybe once a week. Then after the action started, after we were turned down, I spoke to him three or four times in one week."

My point is that the testimony --

THE COURT: I get it. I am not ruling, but I hear what you are saying and I will consider it.

MR. BERGEN: Thank you.

BY MR. BERGEN:

Q Did you at any time ask Mr. Klein to call Mr. Menon?

A Yes.

Q When was that?

A After we got turned down, I was talking to Mr. Klein and he said Mr. Lennon was a very fair man and I told him that I tried to call Mr. Menon and if I could talk to him and he knew all the facts of what went on here I was sure that we could probably work something out.

Q Did you tell Mr. Klein anything else?

A I asked if he knew Menon well. I asked, "If you could ask Mr. Menon to talk to me."

Q Did Mr. Klein agree to do that?

A Yes.

Q Now, did you have anything specific in mind that you were going to discuss with Mr. Menon?

A Well, I certainly wanted first to clear the air. There was some rumor around that it was a pirated tape, to explain to Mr. Menon exactly what took place. I felt that was to my benefit. And then if there was an area where something could be worked out, because Capitol was not in TV mail order per se, and possibly something could be worked out, and it was import to me that Mr. Menon know

I just did not grab a bunch of tapes out of some studio, that they were delivered to me, and he know the whole picture.

Q Were you going to make any financial offer to Mr. Menon?

A If the climate was right I might have. I certainly had many options once I was talking to Mr. Menon and explained everything to him.

Q Let me read you from your deposition, page 337:

"Q Did you have a particular method in mind of resolving it? That is, were you going to make a particular offer?

"A Yes. 'Let me put it out because morally, I should.' Then -- and we probbaly would have sold more."

Do you recall that testimony?

A Yes, I believe it is consistent with what I just said.

MR. BERGEN: Your Honor, a moment ago you made a statement that I was arguing with the witness. Every time I ask the witness a question, he replies, as he just did, "I believe it is consistent with what I just said."

THE COURT: Well, he is the witness, and, unfortunately, maybe he can make statements like that.

THE WITNESS: I realize it now. I am sorry.

THE COURT: I have to listen to this and I have to determine whether it is consistent or inconsistent, and I guess we can leave it at that.

Go ahead.

(Continued on next page.)

Q Let us go back to where you spoke to Mr. Klein before you had the meeting with Mr. Seider on January 30th and let me read you something from your deposition at page 337:

"Q Prior to the time Mr. Seider came to you, however, I believe you had said you had a few conversations with Mr. Klein, am I correct?

"A Yes."

Now, what were those conversations that you had with Mr. Klein before the Seider meeting?

A The January 30th meeting you are talking about?

Q Yes.

A About the copyrights, we talked about the copyright, when I called him about a license.

Q No. I mean after that conversation, after that conversation and between January 30th.

A I don't follow you. You mean after January 30th? Before you said --

THE COURT: You read that deposition reference again.

You listen to this very carefully, Mr. Levy, and see if we can find out where were are going.

Read that again.

Q Page 337:

"Q Prior to the time Mr. Seider came to you, however, I believe you had said you had a few conversations with Mr. Klein, am I correct?

"A Yes."

THE COURT: The question, Mr. Levy, is -- maybe this seems repetitious, but does that refresh your memory or do you recall in any way having any conversations with Mr. Klein after the discussion of copyright in October and before Mr. Seider came in.

THE WITNESS: Not really, no, sir.

THE COURT: When you say not really, are you uncertain?

THE WITNESS: No, I don't believe I had any conversations.

THE COURT: All right. I don't think there is anything more we can do on that, Mr. Bergen, unless you have another --

MR. BERGEN: I believe I can refresh his recollection, your Honor, if I just may have another minute.

THE COURT: Okay.

Q Mr. Levy, I read you from Mr. Klein's deposition, page 71, and it is an answer by Mr. Klein:

"I told Joel Silver to receive it. The fol-

lowing day," and I believe that Mr. Klein is referring to January 29th, "the following day a phone call came in from Morris Levy. I assumed, I guess incorrectly, that he was calling about was my agreement to give a rate. I -- and why I was reneging on it. I called him back.

"And incidentally, I am familiar with the dates because I looked at my diary yesterday and I looked at Mr. Silver's diary.

"Q Yes.

"A Diary, telephone list. Mr. Levy got on the phone and said to me 'Listen, Alan, didn't you tell me in 1973, when we were talking about the possibility of putting out a Beatles album, that Apple Records, Inc., New York had the rights,' and I said 'Yes,' and he said 'Okay, that's all I wanted to know,' and he hung up.

"Q That was on the 29th?

"A Yes."

Does that refresh your recollection, Mr. Levy, that you spoke to Mr. Klein on the 29th?

A No. I believe that conversation took place on the 20th.

Q Before you had the meeting with Mr. Seider?

A No, after I had the meeting with Mr. Seider.

THE COURT: Did you say Mr. Klein will be here

at 2?

MR. BERGEN: I don't know what time.

THE COURT: Mr. Schurtman, is he going to be here at 2?

MR.SHURTMAN: Yes.

THE COURT: I am in the courthouse and I can eat lunch quicker than anybody else. I can be here at 2 or we can recess until 2:15. Does that make a difference to you?

We better make it 2:15 because it is a bad day. I think we will recess now.

Well, we will go another three or four minutes. Let us use the time. Then we will recess at 1 until 2:15.

Q You testified in this trial, Mr. Levy, that you had heard rumors that Capitol was putting the album out some time before January 30th. Do you recall that?

A Yes.

Q Who did you hear those rumors from?

A I really can't exactly say, Mr. Bergen, but somebody mentioned to me that they heard that Capitol was putting it out.

Q Was it Mr. Klein?

A Idon't believe so. I am not sure. Idon't

think so.

Q I read you from page 341 of your deposition. You are referring to a conversation you had with Mr.Klein prior to the Seider meeting.

"Q Did he transmit to you any information from Mr. Menon at all prior to the time that you met with Mr. Seider?

"A He told me, I believe, that Capitol was planning to put the album out. Where he got the information he didn't say. He didn't say whether he got it from Bhasker Menon or not. He told me that Capitol was planning to put it out."

Does that refresh your recollection?

A I said that, I guess.

Q So it was Mr. Klein that told you that Capitol was putting the album out?

A It is possible.

MR. PRETTYMAN: What was the answer?

THE WITNESS: It is possible.

Q Did Mr. Klein ever tell you anything about who had the rights to retail fulfillment centers?

A No.

Q Did he ever tell you about who had the rights to the foreign sales outside North America?

A He may have, but it had nothing to do with the deal we were working on in '72 or '73. I don't believe so. Or EMI, I would know it was EMI.

Q Do you recall Mr. Klein telling you any of this information in January 1975?

A No, I don't think so.

Q Let me just read you from Mr. Klein's deposition and see if it refreshes your recollection.

At page 97:

"Q Did you at any time ever tell Mr. Levy that if he had Mr. Lennon's permission he could sell and distribute the Roots album outside of North American without EMI permission?

"A Absolutely not. In fact, I told him exactly to the contrary.

"Q When did you tell him that?

"A Oh, God. Probably in January, January, February, right after he informed me -- because he asked me to in effect reconfirm that I had said to him that Apple Records, Inc. in New York had the rights. I told him my understanding, that they did, but that it was only for the United States and maybe Canada and certainly not for retail outlets, retail fulfillment centers."

Does that refresh your recollection about

a conversation you had with Mr. Klein?

MR. SCHURTMAN: Your Honor, I don't see any inconsistency.

THE COURT: Does this refresh your memory that he told you this in January or February 1973?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: We had discussions in February.

MR. BERGEN: Can we break here?

THE COURT: Let us break here.

(Luncheon recess.)

mms

AFTERNOON SESSION

(2.15 p.m.)

THE COURT: Do we have Mr. Klein?

MR. SCHURTMAN: I call Mr. Allen Klein.

- -

A L L E N K L E I N , called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Klein, where do you reside?

A 3101 Palisade Avenue, Bronx.

Q Mr. Klein, my name is William Schurtman. I am the attorney for the plaintiffs Big Seven and Adam VIII and also for Mr. Morris Levy.

Have you and I ever met before?

A No.

Q Are you here pursuant to a subpoena?

A I am.

Q Did any attorney for the plaintiff prepare you for your testimony this afternoon?

A No.

Q Were you willing to talk to any of the attorneys for the plaintiffs?

A No.

Q Did we ask you to talk to us?

A Yes.

Q Did you talk to any of the attorneys for the defendants?

A No.

Q Do you know who the defendants are?

A Yes.

Q Have you ever had any conversations, except in a deposition?

MR. PRETTYMAN: Your Honor, excuse me just a moment. I am not sure Mr. Klein understands that I am attorney for one of the parties, and a few moments ago in the corner there was confusion in the record and I asked him about two words which he said he had taken out of his deposition. He may not remember that or recogniz-e who I was. I just want to make sure.

THE COURT: What was that incident, Mr. Klein?

THE WITNESS: Mr. Prettyman came over and said he wanted to ask me question. I told him I refused to speak to Mr. Levy's lawyers and I was not going to speak to him. He showed me the deposition page and showed me some underlinings and said, "Did you do these?"

MR. PRETTYMAN: There were two conflicting

phrases, and he said he took one phrase out.

THE COURT: We will come to that.

Q Is it a fact that except for the testimony you gave in your deposition you have had no communications with the attorneys for either side in the case?

A Me personally, that is correct.

Q Is there any reason why you refused to speak to the attorneys for either side?

A The attorneys for the other side, except for Mr. Prettyman's question, did not want to speak to me, although they subpoenaed me during my deposition, and the reason I did not want to speak to you and any of the lawyers representing Mr. Levy is I am in an absolutely "no when" situation. If Mr. Lennon is successful he will sy he is successful in this venture despite my testimony; if Mr. Lennon loses, he will say it is because of my testimony, and, unfortunately, and I wish this whole thing would go away. I am an unwilling participant.

Q You are personally involved in litigation with The Beetles at this time?

A Yes.

Q And that litigation is still pending?

A Yes, it is.

Q What is your occupation, Mr. Klein?

A I am the president and chief executive officer of Abkco Industries.

Q What is the business of Abkco Industries?

A Motion pictures, music publishing and phonograph records.

THE COURT: What is your company again?

THE WITNESS: Abkco.

THE COURT: You are the head of that?

THE WITNESS: Yes, I am.

Q Did there come a point in time, Mr. Klein, when Abkco became a manager for one or more of The Beetles?

A Yes.

Q When was that?

A Some time in January of 1969.

Q For whom did your company become a manager?

A At that time Mr. Lennon and his wife.

Q Did you subsequently -- when I say "you" I mean your company -- did your company subsequently manage some of the other Beetles as well?

A The companies and the individuals, that is correct.

Q Which companies did you manage?

A What is referred to as the Apple group of companies.

Q Would that include Apple Records, Inc., New York?

A Yes.

THE COURT: Does that mean you were the manager for all The Beetles?

THE WITNESS: The Beetles personally had services for specific areas with a partnership which included Apple Corps Limited. Abkco was appointed manager for Apple Corps Limited, and so, in effect, managed certain specific areas of the activities of individuals.

Q Did Apple Corps Limited in turn own stock in Apple New York?

A Directly or indirectly, yes.

Q Now, at the time that you took over the management of the Apple companies in 1969 were The Beetles under contract to EMI?

A Yes.

Q Was that an exclusive agreement?

A Yes.

Q Did you decide that you would try to renegotiate that agreement?

A Yes.

Q When?

THE COURT: Can I interrupt a minute.

You said in January 1969 you became manager of Mr. Lennon and his wife. Then you said subequently, if I recall it, you became manager for the Apple companies. When was the subsequently?

THE WITNESS: On or about May 8, 1969.

THE COURT: All right, Mr. Schurtman, I am sorry.

BY MR. SCHURTMAN:

Q After May 8,1969, did you decide that you would try to renegotiate The Beetles' contract with EMI?

A I attempted to reneogiate the contract with EMI prior to May 8th.

Q When was the EMI contract due to expire?

A This month, I think, January, 1967.

Q What basis, if any, did you have to try to renegotiate at that point?

A I think I took the position that under the 1967 agreement, which was the agreement under which The Beetles as a group and individually were exclusively bound to EMI, that there was a product commitment. I don't remember the exact number of recordings that had to be delivered, but I believe it was 90, and at that point in time, in 1969, I believe that The Beetles had either delivered 90 or were quite close to it, and that although

they would have to render what ever future services they might have with regard to the recordings to EMI, they were under no obligation to deliver any further product, and so the basis for the negotiation was the fact that although they would have had no obligation to deliver additional product if EMI wished addipnal product, we would be willing to negotiate a guarantee of such product on certain conditions.

Q Well, would it be fair to describe the situagion as it existed then as a stand off between The Bettles and EMI?

A Yes, sir.

Q In other words, The Beetles in your view were under no compulsion to deliver further product, but, I take it, by the same token, The Beetles could not work elsewhere without EMI's consent?

A That is correct.

THE COURT: Mr. Klein, I think it would be helpful if you spoke a little slower and a little more loud. This room is hard to hear in.

Q In these negotiations for a renegotiated contract what were you trying to accomplish for your clients at that point, what was your ultimate objective?

A One was to renegotiate the royalty rate with respect to old master recordings so that all sales or all royalties paid on all master recordings, irrespective of when they were made, would be paid at a higher royalty or the highest royalty.

In addition, I attempted to structure and did structure an agreement whereby EMI instead of licensing the master recordings to Capitol Records, which at that time I believe they had a 70 percent interest in, they would license directly to the Beatles' own company, Apple Records, Inc., New York.

The reasons behind my wanting to do this were --

THE COURT: What was that second? The structured agreement, you wanted to do what?

THE WITNESS: Arrange so that the Beatles' recordings instead of being licensed by EMI to Capitol would be licensed by EMI to Apple Records, Inc., New York.

Q You say your negotiationsbegan --

THE COURT: What was the purpose of that? What difference does that make?

THE WITNESS: In the first instance, it gave

the absolute and total control of the release and sale the date that the record could be released and the number of records which could come out to Apple Records, Inc., New York, and in addition to that, instead of their just being a royalty payable to the Beatles, they would be the owner, in effect, of the records, they would be the manufacturer, and would sell finished product to Capitol, and if there were any differences the question would not be a question of royalty but -- a royalty due, but a question of possible conversation of goods.

In addition, Apple Records, Inc., New York, received certain rights and gave specific rights to EMI.

Q To EMI or to Capitol?

A To Capitol. Sorry.

Q We will get to these reservations in a moment.

MR. SCHURTMAN: Before we get to that, your Honor, I am prepared to question the witness about royalty if you think it is necessary and appropriate.

I hesitate to do it in open court because of the discussion we had.

THE COURT: I don't need to have that. I don't know that there is any particular reason why I have to have that.

MR. SCHURTMAN: No. The rates are in the

agreement.

THE COURT: Fine.

MR. SCHURTMAN: Your Honor, we have looked at the rates in the agreements. There is one slight problem. The rates are based on a wholesale price of EMI Records, so that we cannot compare them directly to the price that we have been talking about in this trial.

I wonder if I could ask the witness if he recalls what the wholesale price of EMI Records was.

MR. PRETTYMAN When?

MR. SCHURTMAN: In 1969.

MR. PRETTYMAN: I object on the ground -- I will let the witness answer.

THE COURT: All right.

MR. SCHURTMAN: All right. We will get that testimony in a different way at a later point.

THE COURT: All right, fine.

Q Tell us about the negotiations you had beginning in I assume the springof 1969 leading to the renegotiation of this contract.

A I believe the first meeting I had was with the heads of EMI in England some time in -- before May 8, 1969, where I presented the contention with respect to the fact that the Beatles would, having delivered the 90 recordings,

have no further obligations to deliver.

THE COURT: Do we have to get into all the negotiations?

MR. SCHURTMAN: No.

THE COURT: Let us try --

MR. SCHURTMAN: May I lead the witness a bit?

THE COURT: Yes, of course.

MR. SCHURTMAN: I think I can do it faster then.

THE COURT: All right.

Q Did you conduct these negotiations personally?

A Yes.

Q Did anyone assist you?

A With regard to EMI?

Q First with regard to EMI and then with regard to Capitol.

A With regard to EMI -- this is 1969 -- it spread over a period of time. The first meeting with EMI I was there by myself with three of the Beatles and --

Q Let me put the question more specifically. Do you know Harold Seider?

A Certainly.

Q Was Mr. Seider employed by Abkco in 1969?

A Yes.

Q What was his position at that time?

A You will have to give me the date and I will have to look at the minute books.

Q Was he your superior or was he below you in the hierarchy?

A Mr. Seider was always my superior.

No. I was the president, he was vice president at that time.

Q He worked for you at that time?

A I was the president.

Q When you just said he was your superior you were being facetious?

A Yes, I was.

Q Mr. Klein, the negotiations with Capitol, were they conducted by you or by Mr. Seider? Who was in charge of the negotiations?

A I was.

Q And Mr. Seider was your assistant, correct?

A Mr. Seider assisted me, he and several other employees of Abkco.

Q Let me show you three contracts just to make sure we are talking about the same things.

First I show you Exhibit B, which is a contract dated January 26, 1967 between EMI and the Beatles. Are you familiar with that contract?

Q Yes, I am.

Q That was the exclusive Beatles-EMI contract, right?

A One of them.

Q And that was the one you were tryingto renegotiate?

A Yes, as well as the ones which went before.

Q The ones that preceded 1967?

A That is correct.

Q Next I show you Exhibit C2, which is an agreement made as of September 1, 1969 between Capitol and Apple Records, New York. Are you familiar with that agreement?

A I certainly am.

Q Is that the agreement you negotiated in the spring and summer of 1969?

A I believe that this agreement was part of two agreements.

Q I will show you next Exhibit D, which is an agreement dated September 1, 1969 between EMI and Apple Records, Inc. Is that the other agreement you are referring to?

A No. I believe that the Capitol-Apple Records, Inc.,New York agreement was more than one. One was with

distributing and another was with manufacturing.

MR. SCHURTMAN: I call upon the defendants' counsel, whether they have any other agreements. This is all I have been furnished.

MR. PRETTYMAN: I certainly don't have any other agreement in the courtroom that relates to the issues here.

THE COURT: Let us do the best we can.

Q Keep these three agreements in front of you because I will be referring to them from time to time.

Take a look at the agreement dated September 1, 1969 between Capitol and Apple. That is C-2. Do you remembe when that agreement was signed?

A Yes.

Q When?

A In September of 1969.

Q The agreement refers to a licensing contract from EMI. Does that reference pertain to Defendants' Exhibit D?

A Yes.

Q Was the license contract with EMI, Defendants' Exhibit D, signed at the same time as C-2?

A No. I believe C-2 was signed by the president of Capitol Records in New York the first or second

week in September of 1969 and the license agreement between EMI and Apple Records, Inc., New York was signed after.

Q Do you know when it was signed after?

A I have a recollection December.

Q In December?

A Yes.

Q Can you explain to the Court why the parties signed an agreement in September 1969 which referred to a license agreement as part of it when the license agreement wasn't signed until December of 1969?

A EMI had agreed to grant the rights to Apple Records, Inc., New York. The agreement -- the major revision, the major change with regard to all of the Beatle recordings, the recording agreements, had to do with the United States, and this agreement was drafted and completed in one week's time in New York.

Q Which agreement?

A C-2.

Q That's the Capitol agreement?

A Correct. Was signed by Sal Ianucci, who is the president of Capitol. I believe I gave him a letter of transmittal saying that I would hold this agreement until EMI entered -- EMI signed their agreement, which again was subject to the Bank of England's consent.

Q You said that EMI had already agreed to the basic terms?

A No, that they would agree to license Apple.

Q Right.

A Correct.

Q Had then give you that agreement in writing as of September or was it oral?

A I really don't recall. I dont know whetehr I had a draft of that license in September.

Q But you didn't have a signed license agreement in September, did you?

A Certainly not.

Q From EMI?

A Certainly not.

Q Would you look at Exhibit C-2. That is the agreement between Apple and Capitol. I direct your attention specifically to Article III -- I believe it is page 24 -- Article III, Section 1. Have you got it?

A Yes, I do.

Q That is the part that says "Apple hereby grants to Capitol and Distributor, and they each do hereby accept all of the rights which Apple derives under the licensing contract" -- I assume licensing contract is the agreement that had not yet been signed.

"A That is correct.

Q -- except (1) the right to manufacture records in the United States, (2)the distribution by mail direct to consumers, and (3)" and I don't think we have to go into 3.

Did that section represent the exceptions you referred to previously?

A Yes.

THE COURT: The what?

MR. SCHURTMAN: The witness had testified that there were certain exceptions in the rights that Apple granted to Capitol and my question was whether these are the exceptions he referred to.

THE COURT: All right.

Q Would you also look at Article IV, Section 7. Look at the heading of Article IV,which says "Licensed Territories and Record Clubs," and then look at Section 7, which reads:

"The parties hereto intend to negotiate with Longines Symphonette Society for the release of records derived from Beatles masters through the Capitol Record Club in the United States, Canada and/or Mexico on a non-exclusive basis. The parties also wish to enter into contracts with other record clubs."

Looking at these two provisions, Mr. Klein,

my question to you is whether the words "Distribution by mail direct to consumers" which appear in Article III, Section 1 -- you will have to flip back -- is that exception synonymous or identical with the reference to record clubs is Section 7 of Article IV? Were you talking just about one and the same thing or were you talking about different things?

A No, we were talking about mail order, which encompasses club.

Q Is it your recollection that mail order is a concept which is broader than club rights?

A That is what I had in my mind, yes.

Q So the two terms are not identical?

A No, in my mind.

Q I take it club rights is a form of mail order, am I correct?

A That is correct.

Q But you can also have other types of mail order other than club rights?

A That is right.

Q Before the Exhibit C-2 was signed did you explain its terms to the various people?

A I believe that the terms were -- each and every word in that agreement was read by their British

solicitor to them.

Q Including Mr. Lennon?

A Including Mr. Mc Cartney, including Mr. Lennon, yes.

THE COURT: Are you telling me that the British solicitor sat and read out loud to each of the Beatles this whole contract?

THE WITNESS: I am telling you that exactly.

THE COURT: Were you present?

THE WITNESS: Yes, I was. It was Mr. McCartney's desire that each and every word be read.

THE COURT: Literally at a sitting?

THE WITNESS: Literally at a table at 3 Saville Road Mr. Peter Howard sat and read each and every word.

Q Perhaps if we can take two minutes, Mr. Klein, can you explain to the Court the context in which this was done, why each word had to be read?

A I believe that Mr. McCartney was stalling for time so that his brother-in-law lawyer could arrive from the United States in time to go over this agreement which was to be signed and which was signed by Mr. Lennon with Mr. Mc Cartney present in September of 1969 in Londson.

Q Was there some friction between --

THE COURT: This was September 1969.

THE WITNESS: That is correct.

THE COURT: And this was a sitting where all four Beatles were present?

THE WITNESS: That is correct. Excuse me. Mr. Harrison was not there.

THE COURT: All Beatles except Harrison?

THE WITNESS: That is correct.

Q Was there some friction between Mr. McCartney and the other Beatles at that time?

MR. PRETTYMAN: Your Honor, I object in terms of relevancy.

MR. SCHURTMAN: Only in terms of showing why it was read.

THE COURT: I guess.

MR. PRETTYMAN: What difference does it make?

THE COURT: I will allow that.

A The reason it was read aloud was not because of the friction between Mr. Lennon and Mr. McCartney. It was read aloud because Mr. McCartney wanted to stall the signing of this agreement until his lawyer, Mr. Eastman, arrived in the United States, which he did, I believe, in the middle ofthe week, read the agreement, and he concurred in

the signing of it by Mr. Lennon.

THE COURT: By Mr.?

THE WITNESS: Lennon. Mr. Lennon I believe signed the agreement which is marked C-2.

Q Mr. Klein, let me direct your attention to what I believe is page 36 of C-2, which is the Capitol-Apple agreement, and I direct your attention to paragraph 6, which reads as follows:

A I am sorry. What page is that?

Q I believe page 36. I have the page numbers in pencil.

A Yes.

Q Are we on the same --

A Yes.

Q I refer you to Section 6, which states:

"Neither party may assign this agreement nor any part thereof or rights thereunder to any person without the written consent of EMI except," and then there are certain exceptions which I don't think are pertinent to this case.

I also direct your attention to the licensing agreement, Exhibit D. That is the licensing agreement between EMI and Apple. On page 4 you will see paragraph 8, which says:

"Neither party may assign this agreement or any part thereof or rights hereunder without the written consent of the other save that either party may without such consent assign this agreement," and so forth, and then again there is some language not relevant.

In other words, both agreements say that there may e no assignment without the consent of EMI.

Is it your understanding that there is a distinction between an assignment and a license?

A As it pertains to the language in this paragraph?

Q Let's take it generally first and then we will focus on this paragraph.

MR. BERGEN: Can't we just get a definition from the dictionary, your Honor? Mr. Klein I don't believe is a lawyer. I object.

MR. SCHURTMAN: Mr. Klein negotiated this agreement.

MR. BERGEN: Then ask him about the agreement, but not generally. Objection.

THE COURT: Overruled.

THE WITNESS: Does that mean I am to answer?

THE COURT:Yes. Let's have the question read back.

(Question read.)

A Yes.

Q What is your understanding of the distinction between an assignment and a license?

A An assignment is the -- in my view, the sale or transferring of the total asset or fee.

If we could think of it as a building with land under it, you could -- if you sold something that is a change of title, ownership, but you could buy a building and then rent it, or as in musical copyrights you might receive a copyright -- I have a specific agreement with a group of writers who said if I sell the catalog or if I sell the copyright I have to offer it to them first. Well, this doesn't prevent me from licensing the use of those copyrights throughout the world, even to sub publishers. And that is the distinction.

THE COURT: What is a license?

THE WITNESS: A license is a specific right to use for a specific purpose. I could license the Columbia Record Club for the Beatles' catalog for a year, for two years, I could license the RCA Record Club, I could license the then Capitol Record Club, but I couldn't sell those rights to someone, I couldn't sell for a fixed sum those rights and give up my rights, and the purpose of

this clause, frankly, was that I don't -- at the time EMI would not have entered into those agreements had these agreements not stayed within companies which were owned and controlled by the Beatles.

Q By the Beatles?

A That is correct.

Q Let us focus on the mail order rights. I think you have indicated that the reference to mail order rights indicated that Apple, New York was to retain the mail order rights.

A That is correct.

Q That was one of the exceptions?

A That is correct.

Q Was it your understanding that Apple had the right to license mail order rights to someone else without the consent of EMI or Capitol?

A Yes.

Q Incidentally, could Apple control the type of material that John Lennon would record?

A Apple, New York? No.

Q Do you know --

A No one.

Q Pardon?

A No one.

Q Do you know Mr. Morris Levy?

A Yes.

Q How long have you known him?

A I think I met him in 1957.

Q Do you remember having discussions with Mr. Levy in or about 1973 regarding a TV mail order package?

A Yes.

Q Can you relate to us briefly what you and Mr. Levy discussed at that time?

A Mr. Levy, among other people who are in the television mail order business, had contacted me with respect to a possible Beatle television package.

At that particular time a company or two companies, one called UC Tape or EC Tape and another one operating out of New Jersey, were advertising and selling two-album or four-album sets of Beatle recordings taken from other -- not either from the masters or from recordings and were selling them on television.

I believe that we were contemplating what action to take. One of them was to bring a lawsuit and the other was the possibility of countering the sale of those albums on television with coming out -- by coming out with our own television mail order package, and it was within that frame work that I was speaking to Mr. Levy,

since he was someone who actually was a leader or someone who had started mail order by television.

Q And during these conversations did you tell Mr. Levy who had the mail order rights in the United States for the Beatles product?

A Yes, I told him that Apple, New York had those rights and that we did not need Capitol.

Q That you did not need Capitol.

THE COURT: What rights did you tell him Apple had?

THE WITNESS: The mail order.

THE COURT: Did you tell him Capitol did not?

THE WITNESS: That is correct.

Q Did that projected Beatles television package ever come into being?

A No, I was persuaded eloquently by Mr. Menon that the best way -- that a better way to compete with that television package was to put out two series of hits albums through the normal retail outlets,and Mr. Lennon had some time prior to that indicated a preference for an album cover which would be the last Bealte record, and having that concept, it was decided not to go through mail order but to go through the normal retail distribution channels with those two packages.

Q Mr. Klein, do you remember giving an interview to Playboy Magazine in November, 1971?

A I didn't give it; it is November, 1971; it certainly appeared in that issue.

Q Let me show you Plaintiffs' Exhibit 10 for identification, which is the November, 1971, issue of Playboy Magazine.

I ask you if that contains an interview that you gave?

A Yes, it does.

THE COURT: What is the exhibit number?

THE WITNESS: 10.

Q What exhibit is it?

THE WITNESS: 10.

Q I direct your attention to page 98, the first column. The first column gives your views on the negotiations with EMI in 1969, and at one point it quotes you as saying -- it is near the bottom --

"We got the boys increased royalties, but more important than that, we got them total control and ownership of their product in America."

Did you make that statement to Playboy?

A I probably never used the word "boys," but that is the sum and substance of what I said.

ms2 Klein - direct

MR. SCHURTMAN: Your Honor, since there have been many references to this Playboy article, I offer it in evidence at this time.

THE COURT: Any objection?

MR. PRETTYMAN: No objection.

MR. BERGEN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 10 was received in evidence.)

xx BY MR. SCHURTMAN:

Q Mr. Klein, let me take you on to the year 1974.

Do you remember getting a telephone call from Mr. Levy on or about October 10, 1974?

A If that is the day after Mr. Lennon's birthday, yes, I remember.

Q That is the day after Mr. Lennon's birthday.

Did you get a call from Mr. Levy that day?

A Yes, I did.

Q Can you tell us what Mr. Levy said to you and what you said to him?

A He told me that Mr. Lennon was going to record a song which is ccontained in Abkco's publishing catalog and would I be willing to give him a rate, that is, a license at less than statutory. I indicated that -- I

guessed wrong -- I think I said to Mr. Levy, "I know the one; it is the one of Boy Falls In Live and I think he has already done it," and it is like asking for a rate after he had done it. And he said, "No, it is not that song." And so I indicated to him that I would not stand in the way of a deal getting done if everyone else was willing to accept the rate; I would just give a favored nations deal.

Q Do you recall anything else that was said?

A The conversation was over.

Q Well, was anything said during that conversation about Mr. Lennon making a television package?

A I don't think so.

Q Do you recall having your deposition taken by Mr. Barrett Prettyman on August 1, 1975?

A Yes.

MR. PRETTYMAN: If it is for impeachment purposes I object.

MR. BERGEN: I object. It is his own witness.

MR. SCHURTMAN: In the first place, he is not my witness.

THE COURT: Objection overruled.

MR. SCHURTMAN: In the second place --

THE COURT: Objection overruled.

Q Mr. Klein, do you recall giving the following testimony, and I refer to page 27 of your deposition, a question by Mr. Prettyman:

"Q Did he -- meaning Mr. Levy -- indicate this would be a television package?

"A Yes, no question about that."

Does that refresh your recollection?

A I am sorry, then, I didn't understand your question. I thought you said whether Mr. Levy said he had made arrangement with Mr. Lennon to put out a television package.

MR. BERGEN: That is exactly the question.

THE WITNESS: That is the question I thought you asked. Mr. Levy didn't say he made a deal with Mr. Leonnon on a television package.

Q First of all, did Mr. Levy say anything during the conversation that Mr. Lennon was making a television package, regardless of for whom?

Let us take it step by step.

A I don't know if Mr. Levy said he was making one or that this package would be for television. I certainly was under the impression that Mr. Levy certainly indicated that this was a television package.

Q Now, do you have any specific recollection that

Mr. Levy did not say that he had a deal with Mr. Lennon?

A I don't have a recollection one way or another.

Q Well, had you, in fact, heard perhaps prior to your conversation with Mr. Levy that day that there was some sort of a deal between Mr. Lennon and Mr. Levy?

A Prior to that day?

Q Well, on that day?

A After that day I believe a then employee of Abkco told me that he had been at a party for Mr. Lennon and that he had heard at that party that Mr. Lennon and Mr. Levy, or that Mr. Levy was going to put out a television package of Mr. Lennon's, of an album of Mr. Lennon or with Mr. Lennon.

Q What was the name of that employee?

A Mr. Peter Bennett. But I might caution you, because I asked Mr. Bennett about this after my testimony, he had difficulty recalling it.

Q When you say after your testimony, you mean your deposition testimony?

A That is correct.

Q In your deposition testimony you did testify that Mr. Bennett had told you about being at the birthday party for Mr. Lennon?

A There is no question he told me he was at the

birthday party for Mr. Lennon. I specifically asked him whether or not it was he who informed me that Mr. Lennon and Mr. Levy were together going to put out a television package. He indicated that he could not remember whether he had told me that.

Q Do you recall testifying in your deposition that he had told you that Mr. Seider might have told him about that package?

A That is the ssme conversation. I still have that present belief, that that is what Mr. Bennett told me. I tried to confirm it with Mr. Bennett and Mr. Bennett says he does not recall.

Q Now, you started to testify before that there did come a point where you heard about some sort of a deal between Mr. Levy and Mr. Lennon?

A That is correct.

Q When did that happen and how did it happen?

A It is the same two conversations that I am referring to, the one conversation that I had with Mr. Levy when he asked for the rate, and I assumed by that that he was involved in this television package with Mr. Lennon, otherwise there would be no purpose in his asking me the rate. Mr. Lennon could have done that. And then, again, my remembrance of what I believe was information

passed on to me from Mr. Bennett. And the third was a conversation that I had with Mr. Lennon, I believe, in November of 1969.

Q Tell us about that conversation?

A Mr. Lennon had been visiting Record World, which is on the floor above the offices of Abkco, and stopped by to pick up an award. He stopped by. He was very tired. And he was just looking out the window, and I believe he said something to the effect, "Morris Levy says very nice things about you."

And I said, "That is nice. I like Morris, but I wouldn't make the deal with him."

I indicated -- and this might sound disjointed, but it is the way I remember it -- I indicated to him that I knew about it because Mr. Levy had called and asked me to license or give a rate on the license for the album. And Mr. Lennon said to me that "I think that is premature." I indicated to him that Apple had those rights, and he said to me, "Well, let's not talk about that business stuff." and we just dropped it, and that is the end of the conversations that I had with Mr. Lennon, Mr. Levy, or anybody with regard to a television package until January of 1975.

THE COURT: Read back to me the testimony about

the conversation with Mr. Lennon.

(Testimony read.)

Q Why did you tell Mr. Lennon that he shouldn't make the deal with Mr. Levy?

A I didn't think he should put out a television package of recordings which were made of songs which were hits. They were, in effect, new recordings. I just didn't think it was in his best interest, and I didn't tell him that, I didn't say anything to him.

Q Did he ask you why he should not make a deal with Mr. Levy?

A No.

Q You just didn't discuss the point?

A He was really very tired.

Q Now, did you have any conversations with Mr. Levy either personally or by telephone between October 10, 1974, when he called you for a rate and January 29, 1975?

A I don't know if it is January 29 or January 30 or January 31, but that is correct, I didn't speak to him until one of those days.

Q Now, did there come a point at the end of January when you did speak to Mr. Levy?

A Yes.

Q How did that conversation come about?

A I had received a call from Mr. Levy at a time when I was not in the office. On my return to the office I returned his call. The conversation was very brief, and what he said to me is, "Allen, didn't you tell me back in 1973 when I came and talked to you about the television package for the records that Apple had the rights?"

And I said, "Yes."

He said, "Okay." and he hung up.

Q Was that followed by another conversation?

A I called him.

Q The same day?

A Yes.

Q Did you reach him?

A Ultimately.

Q And then what was said?

THE COURT: Did you call him the same day?

THE WITNESS: Yes, I did.

THE COURT: What was said?

THE WITNESS: I asked him, "Why did call and hang up so abruptly? What was the problem?"

He indicated that he had been had, that he had had an agreement with Mr. Lennon with regard to the package, and that t4hey had reneged on it, and he was coming out with

his own package. I don't remember if this is the conversation, the first conversation, because there were two or three or four or five, a number of them, during the period of days, and so they somewhat ran together, but I certainly was told by him that he was going to put out an album, and I think he told me he had the tapes. And I asked him or asked and told him that I had a very personal relationship with Bhasker Menon, who was the president of Capitol, and it would be really difficult for me not to call him and tell him this.

I better back up a bit.

The day before Mr. Levy's call, someone at Capitol, who is in charge of licensing music publishing rights with regard to proposed albums, called and spoke with Joel Silver from Abkco and asked whether or not he could have a rate on an Abkco composition that Mr. Lenon was going to do. I assumed at that time that it was the same package that Mr. Levy called me about and that they were doing it together or whatever, and so I knew that Capitol was coming out with an album, and when I found out from Mr. Levy that his television album was the subject of a dispute between the two of them and that he was coming out with an identical or the same album that Capitol was coming out with, I felt this would be a problem, and I said to him

that I really wanted to be relieved of the confidentiality of the conversation and I was going to call Bhasker Menon, and he said, "Fine, call him. I would like to talk to him." and I did this.

Q Did you speak to Mr. Menon?

A Yes.

Q What did you tell Mr. Menon?

A Pretty much what Mr. Levy had indicated to me, that he was coming out with the package.

Q What did Mr. Menon say to you?

A I don't remember his exact words, just that it was something he would get back to me on I think I put the proposition to him that it may be there would be two albums, one being sold on television and one being sold on television and one being sold at the stores competing with one another, and to avoid chaos and confusion that did neither side any good it might be a good idea for Mr. Menon to speak with Mr. Levy.

Did Mr. Menon say at the time that Capitol was negotiating something else with Mr. Levy?

A I don't know in which conversation it was. He certainly indicated to me that and told me at that same time Capitol was licensing certain recordings for mail order package or packages with Morris' company and that

they were not going to terminate these negotiations or stop them because of this. And I then used that particular bit of character on behalf of Mr. Menon, to indicate that Mr. Menon was an individual who had a lot of character.

Q Did you suggest to Mr. Levy that he ought to have a discussion with Mr. Menon?

A I don't know whether it was I who suggested it or he who suggested it, but certainly I concurred in it.

Q Did Mr. Levy indicate that he wanted to talk to Mr. Menon?

A Yes, he did, on more than one occasion.

Q Did he ask you to set up a meeting with Mr. Menon?

A He asked me, yes, he did, and I made the call.

Q What did Mr. Menon say?

A He would get back to me. What he finally did, he said that it was a complicated situation, that he, Capitol, did not want to involve themselves in, that it was a problem of Mr. Lennon and Mr. Levy, and that Capitol would await the instructions of Mr. Lennon.

Q Did you have any further involvement with the situation after that?

A Other than sporadic phone calls, no.

Q Now, Mr. Klein, do you know the difference between a 7-1/2 IPS master tape and a 15 IPS master tape?

A Not really, no. I know what it is.

Q I am not asking you for engineering knowledge. But do you know that some masters are 15 IPS and some 7-1/2?

A Yes.

Q Is it possible to make a commercial phonograph record from 7-1/2 IPS tape?

MR. PRETTYMAN: I think the witness both here and his deposition has indicated great lack of knowledge in this field, and unless something further is establishhed I object to it.

THE COURT: Do you have knowledge? Are you able to give an opinion on that?

THE WITNESS: The word commercial is what bothers me. There are recordings that come from cassettes that are commercial.

THE COURT: The word "possible" bothers me. Anything is possible.

Q Let me ask a different question.

You just mentioned that a song can even be made from a cassette, a record can be made from a cassette.

Do you know whether Mr. Lennon ever did that?

A I think at the end of the album called Imagine there is a recording which came from a cassette. I don't think it is 20 seconds, called My Mommy's Dead.

Q In other words, the album was manufactured from a cassette? Is that your answer?

THE COURT: Let us pass this.

Q Does EMI send off 7-1/2 inch tapes from which records, commercial records, are to be made?

A I don't know what size tapes they send off. I really don't.

Q Let me read to you from your deposition with Mr. Prettyman wuestioning you, at page 88:

"Q Is it the normal practice for major artists to put out albums based upon or recorded from a 7-1/2 rough mix?

"A Let's break them up. A rough mix, no. A 7-1/2 inch tape, I think thats what they send over from the foreign licensee. I think that EMI send it over, a 7-1/2 inch, from which we make the parts."

MR. GRUMBACH: Read the next four lines?

MR. SCHURTMAN: Yes.

You continue to say:

"So that is not --"

And then Mr. Prettyman interrupted you and said:

"Q Was that your impression?

"A I think so. But I am not sure. I am not an expert on what size the measurement of the tape is."

MR. PRETTYMAN: Part of the reason I am objecting, he simply does not have knowledge in this field and acknowledges it on the stand.

THE WITNESS: I stand by exactly what you just read with specific regard to my previous deposition. I think that they send us the 7-1/2.

THE COURT: You don't deal with the recording, the speed of the tape used? That is not your field?

THE WITNESS: Absolutely not.

THE COURT: Let us pass that with this witness.

MR. SCHURTMAN: I have no further questions.

MR. PRETTYMAN: May I have just a moment before I begin, sir?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. PRETTYMAN:

Q I think you indicated -- incidentally, I am Barrett Prettyman and Irepresent both Capitol Records and EMI Records.

I think you indicated that you are engaged in litigation with the Beatles. How many lawsuits are involved? Is it just one lawsuit?

A I wish there were. No, a series.

Q A number?

A I just -- more than three.

Q Are they all in one jurisdiction or are they in different places?

A Different places.

Q Do they involve different issues and overlapping issues?

A Some are different, some are overlapping.

Q Who is suing whom?

A It depends upon where?

Q In some cases the Beatles are plaintiffs and some places they are defendants?

A That is correct.

Q Do you have any idea how much money is involved overall in terms of what is being asked and the counterclaims

and the whole business?

A Were Abkco is the plaintiff I believe we specify $24 million plus. Where the Beatles are plaintiff I think they are looking for rescission. So I don't think they quantify.

Q When you dealt with Mr. Levy in 1972 or '73 in regard to a possible TV package of a Beatle album were the cuts that were being considered for that album more than one year old?

A I have no idea. Mr. Levy indicated to me that he wanted a license on a recording that had as yet not been recorded.

Q No, no, no. I am going all the way back now. You remember you talked about --

A I see. Yes, certainly.

Q You had indicated in the early days, way back before this dispute came along, you had indicated that you had dealt with Mr. Levy in regard to a possible TV package. You recall that?

A Yes.

Q Were the songs being considered, the cuts being considered for that album, over a year old?

A Certainly.

Q And if they had not been over a year old would

you have been free to negotiate with him in regard to that album?

A I really never gave it any thought.

Q Is it not a fact, Mr. Klein, that you have always interpreted the one year restriction to apply to mail order and club rights alike, that is, that in order for Apple to deal with anyone in regard to a TV package that the various cuts to be included must in fact be over a year old?

A Certainly with regard to club.

MR. SCHURTMAN: Your Honor, I object.

THE COURT: What is your objection?

MR. SCHURTMAN: I don't know what this one year restriction that they are talking about is.

THE COURT: Can you get me oriented? What are you speaking of, Mr. Prettyman? Is there something in these documents?

MR. PRETTYMAN: Yes, sir.

MR. SCHURTMAN: Can you point to it?

MR. PRETTYMAN: May I finish answering his Honor?

MR. SCHURTMAN: I am sorry.

MR. PRETTYMAN: There is a one-year restriction in regard to certain albums being released.

THE COURT: Can you point it out?

MR. PRETTYMAN: Yes.

If you look at Plaintiffs' Exhibit C-2 --

THE COURT: Defendants' C-2?

MR. PRETTYMAN: C-2. Look at page 33, the last sentence.

MR. SCHURTMAN: May the witness look at it?

MR.PRETTYMAN: Doesn't he have it right here?

THE WITNESS: I know the provision.

THE COURT: All right. "No such records may be released through any record club earlier than one year after first release in the United States."

Okay. I have the sentence. What is your question again?

MR. PRETTYMAN: I am asking the witness whether he was dealing with Mr. Levy back in those early days, '72 or '73, in regard to a pckage that did in fact involve songs that had been released over a year prior to that time and that that was the reason he felt free to negotiate in regard to those songs.

THE WITNESS: Mr. Prettyman, I don't believe I directed myself to the one yeear aspect at all. I was merely trying to combat a pirated television package which was on

-- which was being sold on television and I believe that also had recordings which were recorded and released in that -- you know, within a year's span, in fact, less than a year. I did not address myself to that at all.

Q You had not interpreted that clause to apply to any mail order, is that your testimony?

A No, I said -- you asked me whether or not when I spoke to Mr. Levy --

Q Then let me with draw that and ask it to you more directly.

Do you not interpret that sentence to apply to all mail order?

A Do I now or --

Q Let us say now, yes.

MR. SCHURTMAN: Your Honor, I am not sure --

THE COURT: No, please. That is a perfectly proper question.

A If mail order and club are considered the same, certain.

The only reason I am making that statement, Mr. Prettyman, is because atthe time this agreement was negotiated the one year restriction was specifically for club, and that particular paragraph was negotiated at the behest of Capitol to insure two things:

One, that if a club arrangement were made by Apple that the Longines Symphonette, who had purchased Capitol's Club rights, would get the Beatle product or would be licensed at the same rate as someone else we might make it with, and the one-year period was I believe put in there at the behest of Capitol also so that if an album were put out by club a lag time as it relates to retail sales would occur.

Frankly, I never thought of and I never really contemplated at the time this agreement was done any specific situation. I would have probably not put one year in there. It was Capitol who wanted it.

Q You put a condition on that answer, Mr. Klein? You said if mail order and club are the same. But I am trying to get you now to focus on whether in fact you now believe that that provision would apply to mail order as well as club.

A I don't have any opinion on it now.

Q You don't have anyway?

A I don't have any opinion on it.

Q I am sorry. I didn't hear the end.

A I don't have any opinion.

THE COURT: You mean that one sentence?

THE WITNESS: Whether or not mail order and

club are the same. I think I testified that I believe mail order was the broad spectrum and that club was one factor of mail order.

Q Is it not true, sir, that at the time that this contract was negotiated that you did in fact consider that club and mail order were the same thing, that there really -- for example, back in 1969 there really was no TV package as there is today, was there?

A No. But you see, Mr. Prettyman, what I tried to do in negotiating this agreement and what I have done in other areas and had I been able to word the contract the way I would have liked to I would have taken the same position that most of the record companies take, and that is exclude everything known or hereafter known.

We were pressed and we were very specific. Capitol was not in the mail order business. In fact, in this particular agreement -- and I hope I am not appearing argumentitive-- but in this agreement what we were really trying to do was give Capitol those rights in businesses that they were in, and there is a specific provision whereby if Capitol is no longer in a particular field and if they want to license those rights to a third party we, Apple, had the right to match the deal, to better it.

I was attempting here to restrict what Capitol

was getting and to make as broad as possible --

Q Let me ask you this .

THE COURT: Let him finish.

MR. PRETTYMAN: I am sorry.

A -- and make as broad as possible what Apple was getting.

No one sat down and specifically said "Listen, mail order is only club." Otherwise I am sure the same words would have been used.

THE COURT: What is that?

THE WITNESS: That mail order is the same as club. Otherwise the same words would have been used.

THE COURT: What do you mean the same words would have been used?

THE WITNESS: Just club.

THE COURT: In other words, if --

THE WITNESS: If club rights were the only thing that were being reserved the paragraph with the reservation would have said club rights are the only thing that are reserved, and that would have been the end of it, I believe.

Q Mr. Klein, you had a number of conversations during these negotiations with regard to club rights, did you not, the negotiations in the Apple-EMI contract

actually included a number of conversations back and forth about club rights?

A Yes.

Q Were there any negotiations about mail order rights as being different or broader than club rights, did you discuss mail order with anyone?

A Mr. Prettyman, the only -- the conversation with regard to club, the several conversations with regard to club, were had because the then chairman, Mr. Gortikov, of Capital Industries, after receiving the signed copy of Exhibit C-2 signed by the president of Capitol Records, Mr. Ianucci, attempted to renegotiate several of the terms, and one of the terms that he wanted to negotiate was the question of vlub, to insure that the Longines record club would absolutely and definitely get the record pckage for their club.

I am not a -- I don't have strong feelings towards allowing product to go into record clubs. I like the idea of exclusivity and I did not want a commitment.

EMI, who had not as yet -- had not at that time executed their license, and who owned 70 per cent of Capitol, had a meeting with myself in London. I indicated that they were attempting to use Capitol to renegotiate some of the terms that they had agreed to. I presented

EMI with the signed agreement by Mr. Ianucci and EMI said "Well, if this is what he agreed to we will not use as leverage the fact that we have not entered into the license with you yet to get you to renegotiate it," and at that particular time we agreed the followin-, amongst ourselves, that whereas we could refuse to deliver product, that was our ultimate weapon,and EMI's ultimate weapon was that they could always pull the license without cause.

Q Is that your position too? Have you recognized that?

A From the very first day I think that there was --

Q That EMI could cancel with Apple at any time?

A Absolutely.

Q And for any reason?

A In fact, I believe that there is a companion agreement between EMI and Apple which says that if they do that without cause the net moneys are still to be paid to Apple.

Q Getting back to my question, sir, which was really quite a simple one, you indicated that there were discussions back and forth about club rights, and you have now confirmed that.

A Yes.

Q My question to you, however, was whether there were any discussions of any kind with anyone that you can recall that dealt with mail orders as such -- I am distinguishing now between mail order and club -- which dealt directly with the issue of mail order.

A You are talking about during the negotiations?

A Yes.

A Not that I can recall.

Q And is not that because you and the other negotiators in fact equated mail order and club right as being synonymous?

A No, Mr. Prettyman.

Q Let me refer you to your deposition, sir, beginning on page 39. I handed you the Article III, paragraph 1 on page 24 that we have been talking about and on page 40 I say:

"Q If you will direct your attention specifically to subparagraph 2.

"A Yes.

"Q Would you tell us as best you remember all of the discussions that you had with anyone which led to theinclusion of that langauge?

"A I just know we were going to keep all mail order club rights.

"Q Who is 'we"?

"A Apple Records, Inc., New York.

"Q My question, however, was tell us all of the discussions that you had as best you remember which led to the inclusion of that language.

"A I don't remember any specific disucssions about it.

"Q I see.

"A That was just one of the terms.

"Q And was that discussed with Mr. Gortikov during August?

"A I really don't recall.

"Q Do you recall whether it was discussed with Mr. Iannucci?

"A I just don't recall.

"Q Prior tothe inclusion of that language had you specifically discussed with any of the Beatles distribution by mail direct to consumers?

"A You mean that we were reserving the club? I probably did. On the motion picture, I am not sure I did. Motion picture sound track exclusion, I am sure I did.

"Q From your language there reserving the club and also your prior statement that you reserved club rights, is that a fair assumption, Mr. Klein that equated that

language with the reservation of club rights?

"A Yes, mail order and club rights.

"Q That is, you equated the language in 2 with a reservation of club rights in Apple as opposed to giving them to Capitol?

"A That is correct.

"Q All right.

"A That we were not giving those rights, mail order and club, to Capitol.

"Q Mail order and club?

"A Yes."

I apologize for reading so long, your Honor, but it is not fair without the total inclusion here.

"Q You are now talking about those as not the same terms but different terms?

"A Well --

"Q Were you thinking essentially in terms of club rights?

"A No, I was thinking any order.

"Q That would include club rights?

"A Yes.

"Q My question was, and perhaps you answered it but I didn't hear it, had you discussed distribution by mail direct to consumers with any of the Beatles prior

to the negotiations leading to that contract?

"A Prior to the negotiations leading to it?

"Q Yes.

"A Oh, God, you mean prior to the meeting with Gortikov too?

"Q Yes.

"A I don't know.

"Q How about prior to the week in September?

"A I think that afte I got done with my meeting with Gortikov I called each one of them from California and explained pretty much what we had -- what the memorandum was.

"Q And do you recall that you specifically mentioned as part of that discussion distribution by mail direct to consumers?

"A I don't recall specifically mentioning it or not mentioning it."

On the next page:

"Q When it came to the so-called mail order provision do you recall whether there was any discussion?

"A No, I don't recall any of it, except that we sat there and listened."

Then on page 69, fortunately more briefly: I am going back to 68:

"Q As I understand, you said you had an impression that the people from Capitol understood it?

"A I just knew it because we had talked about it for quite a while. The question of club came up, just so you know it, the question of club came up continually, a strong desire to deliver the Beatles product to a [illegible]ine, and I wouldn't do it.

"I mean, these discussions went on over a period of three years. I just would not deliver, you know, the product.

"I can tell you this: I dealt with Columbia on the possibility of putting out a group of television -- excuse me -- a group of albums for club and I think they had spoken to Capitol.

"Q On club rights?

"A Well, that to me is mail order. You know, yes, certainly on mail order. No one talked about television package.

"I told you the first introduction of television was in the early part of 1973 with the possibility of combatting the pirated Beatles product on television."

Again I apologize for the great length in reading.

Is it not the purport, sir, of that testimony --

MR. SCHURTMAN: Excuse me. Objection.

THE COURT: What, Mr. Schurtman?

MR. SCHURTMAN: Where is the inconsistency that Mr. Prettyman referred to?

THE COURT: This is a long reading. We can argue about that later. Put your question, Mr. Prettyman.

Q Is it not the purport of that testimony, sir, and did you not in fact believe when you testified that you really,in 1969, because of the situation, equated club and mail order as being one and the same thing?

A No.

Q If you would look, sir, at C-2, I believe you referred earlier --

THE COURT: You did give that testimony, did you not? That is your deposition that was read?

THE WITNESS Yes, but when he refers to the conversations that I had, it was conversations with other people regarding mail order. I didn't -- excuse me -- television packages. There were no conversations with anyone with regard to putting out a television package until 1973.

THE COURT: That's what you said.

THE WITNESS: That is exactly what I was referring to.

THE COURT: Mr. Prettyman, I will take the deposition testimony and consider that.

MR. PRETTYMAN: Sure. I understand.

THE COURT: All right.

Q You referred, just so there will be no confusion, to two agreement between Capitol and Apple. I wish you would look at C-2, sir, and see if that isn't the two agreements put into one. I say that because I don't want the record to reflect that there is a missing agreement here.

In other words, the pressing and distribution agreements have been subsequently put into one package.

THE COURT: You look at that. We will take a short break.

(Recess.)

BY MR. PRETTYMAN:

Q A couple of brief matters first, Mr. Klein.

There was, was there not, a restriction in the 1967 contract in regard to club rights, that is, thatclub rights could not be given without specific permission of the individual artists or their managers?

A If you will point it out to me.

Q The '67 agreement.

A I am looking at that.

Q Let us pass that for a moment.

You said --

A Excuse me. Is the thing we are talking about on page 5?

Q I apologize for not having it in front of me. Can we pass it for just a moment?

A Excuse me. To answer that, I can tell you that if they -- if they, being EMI, had to get the approval of the Beatles before they could put out record club packages, they didn't get their approval and they did, Capitol did put out television -- record club packages in the United States which the Longine Club had and which were subsequently stopped with the signing of this agreement.

Q Yes, but the point of my question is there is a restriction in the contract that specifically dealt with the problem of club rights and the fact that club rights were not to be given without the approval of the managers or the artists, is that not true, sir?

A If you could please show it to me.

Q Let me pass it for a moment.

A In fact, I believe that on page 5 EMI specifically has the rights.

Q Yes, it is on page 5.

A Is there a restriction? Certainly a

restriction on coupling, but I don't believe that there is a restriction on club. In fact, I believe that there is a specific grant I believe --

Q "Notwithstanding anything to the contrary, such records may be distributed through record clubs in the USA, Canada and Mexico if EMIR's licensee in those territories gives notice to the managers or artists of the intention of the US, Canadian or Mexican record clubs to advertise such records as available through record clubs at least ten days before commitment has been made for such advertising and managers or artists fail to deliver notice to such licnesee within three business days of the time such licensee's notice to managers or artists is given that such record may not be distributed through record clubs in the USA, Canada or Mexico."

Does that not mean, sir, and did you not interpret it to mean that if rights were to be given to record clubs that notice had to be given to the artists or their managers and that the artists or managers could prohibit the distribution through record clubs if they wished and that you could proceed to distribute through record clubs only if they failed to give that notice referred to?

A Meaning Capitol could?

Q Yes.

A Yes, and they distributed those albums through their club without --

Q I am not talking about what they distributed, Mr. Klein.

THE COURT: Yes. Please.

I think we have had it read and you don't disagree with Mr. Prettyman's summary of the meaning of that passage, do you?

THE WITNESS: Not at all.

THE COURT: All right. Let's go to something else.

Q Let me ask you, sir, whether that passage is not the reason for the reservation of rights in the Apple-Capitol record agreement in regard to record clubs.

A No.

Q You said at one point that Apple would be the owner of all records after this agreement went into effect. You don't mean that Apple would own the masters, do you, to these recordings?

A Where did -- when did I say that?

Q You said that while Mr. Schurtman was examining you. Just tell me directly, who owns the masters to Beatle recordings?

A EMI

Q And that would relate both to the Beatles singing as a group and to individual Beatles, is that correct?

A That is correct.

(Continued on next page.)

Q Now, on this business of the assignment from January of '67 to September 1 of 1969, as I understand you, EMI had rights throughout the world for all recordings of The Beetles, both as a group and individually?

A That is correct.

Q And in September of 1969 certain rights were transferred to Apple for North America?

A That is correct.

Q And EMI still retained its rights for the rest of the world?

A That is correct.

Q I believe you said just a few minutes that EMI also retained the right to cancel its Apple agreement at any time and for any reason?

A I s[illegible] I believed they had the right to do it. They didn't retain it; they could have done that.

Q I believe you also negotiated into Exhibit B, the EMI-Apple contract, that that contract would be interpreted by English law?

A I did not; EMI did.

Q The provision is there?

A Yes.

Q And that relates to the assignment and all other parts of the contract?

A I would assume so.

Q Now, let us just look at our theory of assignment for a moment, and in order to do this, Mr. Klein, I am going to go outside the facts of this particular case and pose a hypothetical.

THE COURT: Is there any way to short cut that? This Exhibit D is a license agreement, isn't it?

THE WITNESS: Yes.

THE COURT: I did not grant or sell to Apple all of EMI's rights?

THE WITNESS: It assigned to Apple.

THE COURT: You just told me it was a license agreement.

THE WITNESS: Correct.

THE COURT: Now you say in this license agreement it assigned. I don't want to get caught up on words. I am now using the word license and assignment as carefully as I can. This is a license agreement? Right?

THE WITNESS: Correct.

THE COURT: And it refers to Apple as the licensee?

THE WITNESS: Correct.

THE COURT: Now, Part 8 says neither party may assign and so forth? Right?

THE WITNESS: Correct.

THE COURT: If the party doing the assigning was Apple, it would be the licensee doing the assigning?

THE WITNESS: Correct.

THE COURT: What can a licensee eo with its rights? Does it sublicense?

THE WITNESS: What occurred was that Apple became the manufacturer in the United States of phonograph records, using the pressing plant of Capitol, the present facilities of Capitol to physically manufacture and using the distribution of Capitol to distribute in specific areas. The physical ownership of the finished records, the album in the store is the property of Apple Records, New York. So that it licensed Apple Records, Inc. New York the right to manufacture, sell and distribute in the United States.

MR. PRETTYMAN: Are you finished, your Honor?

I think I can clarify that just a little bit.

BY MR. PRETTYMAN:

Q Actually, when you said a few moments ago that EMI assigned its rights, you regarded whatever EMI gave to Apple as an assignment of its rights, at least in so far as North America is concerned?

A What EMI did is they licensed Apple Records, Inc.

New York to manufacture.

Q So that it gave it limited rights?

A No, it gave it all of the rights that it possessed to do in the Ubited States.

Q Now, let's just say that Mr. Lennon makes an album. The album is now sitting there. Apple, as I understand your theory, could designate unilaterally that album as a mail order album?

A I never said that, but --

Q I didn't say it could do that. Could it just unilaterally say, "This is going to be a mail order?" or does it have to get somebody's permission?

A You have not followed it through. Mr. Lennon makes the recording for EMI under the basic '67 agreement. EMI then under its license licenses Apple Records, Inc. New York, who has the product. How that album comes out, whether it comes out, is purely an totally at the discretion of Apple Records, Inc. New York. If Mr. Lennon decided that he did not want that album to come out, Capitol could not get it.

Q I thought that is what I said a few minutes ago.

When Mr. Lennon puts the album out, here is the album sitting here in front of you, Apple without consulting anybody can say, "This will be a mail order package."

A That is correct.

Q Now, having designated that album as a mail order package, Apple can then go to X company and license that particular album to X company for distribution through television? Is that correct?

A Yes.

Q And once it had given, licensed that album to X company for distribution through television and it had not retained any restrictions in regard to, for example, quality or package or anything else, X company could under your theory, as I understand it, take that master tape, if you will, any kind of a tape that it got, and make an album that was of poor quality, had a jacket which was demeaning to Mr. Lennon, or which had a photograph which you could barely see, and coult put out any kind of an album that it wanted to under the license?

Am I correct? If I am not correct, I want you to stop me.

MR. SCHURTMAN: I object to that last question. It is an utterly distorted hypothetical.

MR. PRETTYMAN: I didn't say it is related to this case.

MR. SCHURTMAN: If it is not related to this case I object to it generally.

THE COURT: I will overrule the objection.

A We are not now talking about Mr. Lennon being the artist?

Q Oh, yes.

A And the president of the company?

Q Yes.

A And controlling the product? Well, if he made the agreement, he made the agreement.

Q And if he said as president of the company under your theory that this license was going to be entered into and he retained no rights in terms of the approval of the final package, it is your theory that X company could take that album and, in effect, distribute it in any method, under any quality, with any album cover that it wished to?

A It would depend upon what the agreement said.

THE COURT: Mr. Prettyman, I gather what the witness is saying --

Mr. Klein, in other words, you are saying that if Apple was willing to license to X company the right to put the album out and if Apple reserved no right of approval or anything like that, X company could act without getting Apple's approval?

THE WITNESS: That is correct.

THE COURT: The question that worried me is

whether EMI would reserve --

MR. PRETTYMAN: There are several problems, your Honor, as it relates to this case. The testimony shows that if there was an agreement on October 8th, the testimony is certainly in dispute as to what, if any, rights Mr. Lennon retained, and I think it is clear from the testimony that it was never spelled out, even if you accept the plaintiff's version, as to what Mr. Lennon said he would thereafter have to approve.

THE COURT: It is self-evident if Apple just said you have carte blanche to do anything you want, as far as Apple is concerned, X company can do anything it wants. That is self-evident.

BY MR. PRETTYMAN:

Q Now, if X company does put out this album in any way it sees fit, it can do that without EMI's approval?

A In the United States, Canada and Mexico I think yes.

Q For the rest of the world it would have to obtain EMI's approval?

A For the rest of the world Apple Records, Inc. has no rights.

THE COURT: Read the last couple of questions and answers.

ms8 Klein - cross

(Testimony read.)

Q Would EMI still own the master to that recording?

A Yes, sir.

Q And the license to X company could be in perpetuity?

A Apple New York could make whatever agreement they wanted to. Whether or not they would make it in perpetuity I don't know. I don't understand what you are --

Q Could the license be in perpetuity? Could Apple give a license on a particular album to X company to put out through television in perpetuity?

MR. SCHURTMAN: Objection. This is a hypothetical question having nothing to do with this case.

THE COURT: I think Mr. Prettyman is trying to illustrate something.

Objection overruled.

A I really don't know.

Q What would EMI get paid, if anything?

A Nothing.

Q I believe you were shown at your deposition the Roots album, were you not, sir?

A Yes, I believe so.

Q Let me show it to you again. This is Plaintiff's Exhibit 34.

Referring you to the back of Plaintiff's Exhibit 34, since 1969 have you ever seen on a Beetles' album the product of other artists advertised?

A I can't say for sure, but I will say probably not.

Q You are not sure?

A No, but I would say probably not.

Q Let me read you from your deposition, pages 83 and 84.

THE COURT: He said probably not.

MR. PRETTYMAN: He said in his deposition never from '69.

Q During the period that you we4e making telephone calls to Mr. Menon that had anything at all to do with the masters in dispute here, Mr. Klein, were those calls matched by calls from Mr. Levy? In other words, Mr. Levy would call you and then you would call Mr. Menon?

A I really can't recall.

Q Would it help you, sir, if I referred you to page 94 of your deposition where you are talking about your calls to Mr. Menon and you said, "And my phone calls to him would pretty much match -- in relationship to the Lennon

album, would almost match the calls to Mr. Levy."

Is that your recollection?

A If that is what I said, that is what I said.

Q In other words, this was not Mr. Menon initiating calls to you in regard to this matter, was it?

A As I said to you, if Mr. Menon remembers that he did not make any calls to me on his own during that period of time, I really would not quarrel with him.

Q In your deposition you said you are sure Mr. Menon called you at least one time, and you are not sure that was the subject?

A My recollection, frankly, is that I spoke to Mr. Menon, and if I were to make a specific call, specifically with regard to this album, it would be as a help to try to resolve a difficult situation. So they could have matched. But I think I also testified that I don't remember just making a phone call to Mr. Menon specifically on this and nothing else coming up. I don't know how to really answer your question.

Q Mr. Klein, I show you what has been marked Defendants' Exhibit OOOO, which is a memorandum from Mr. Stanley Gortikov, dated August 8, 1969, and ask you, sir, if you signed that on the last page?

A I certainly did.

Q Mr. Klein, regardless of any other differences in interpretation that there might be, would you agree with me, sir, that there has never been any question in your mind that as to retail sales through retail fulfilment centers in the United States, that those rights were not reserved to Apple in any way?

A That is correct.

Q And that those rights could not be assigned, licensed or given away in any other fashion without the approval of Capitol?

A Absolutely, it would be in derogation of Capitol's rights.

Q Will you also agree with me, sir, that as to the distribution of Beetle products outside of the United States, whether we are talking about TV or retail distribution or anything else, that you do have to have EMI's approval to give a license, assign any rights?

A I am not sure with regard to Canada or Mexico.

Q I am sorry. Outside of North America?

A Apple Records, Inc. New York had no rights.

Q And, in fact, you so informed Mr. Levy at one point, did you not, both as to retail fulfilment and as to foreign rights?

A I believe I told him as to retail fulfilment

some time during those early conversations, certainly.

Q And did you not also mention worldwide rights?

A I believe that certainly came up, but I think I told him that back in 1973.

THE COURT: You told him in 1973 that -- I want to be clear what you told him in 1973.

THE WITNESS: That except for the United States, Canada and Mexico, Apple New York had no rights.

Q The first time that you mentioned --

THE COURT: Can I interrupt?

In 1973 was there any specific discussion about sales of TV promoted records through retail stores?

THE WITNESS: I don't believe so.

THE COURT: Go ahead, Mr. Prettyman.

Q You may have testified to this:

The first time that you mentiioned to Mr. Menon on the phone Mr. Levy's interest in putting out this album over television, did Mr. Menon express a great deal of surprise to you when he heard that news?

A Yes.

Q Now, in your Playboy article, sir --

THE COURT: He was not the author.

MR. PRETTYMAN: Well, he was interviewed.

Q -- did you get a chance to correct this, Mr.

Klein, after they interviewed you?

A We tried.

Q But they would not let you do it?

A They said they didn't have enough time. I was out of the country.

Q If anything in here is inaccurate I want you to tell me.

The portion that has been quoted to you on page 98, this first column:

"We got the boys increased royalties, there is certainly no question about that? You did that?

"A Yes.

"But more important than that, we got them total control and ownership of their product in America."

That really is just not an accurate statement, is it, Mr. Klein?

A Total control, yes. Ownership of the physical records after they are manufactured, yes.

Q You mean that in terms of an album that is going to be put out through normal channels that Apple has total control without any relationship to Capitol whatever?

A As to when it comes out, the form that it comes out in and when it is to be released, absolutely.

Q Are you telling me that Capitol simply had no rights whatever in any Beetle-Apple album that was going to be put out in the United States?

A The right was to manufacture and distribute and sell when Apple delivered it in the form that Apple delivered it.

Q So that it, at least, had those rights?

A Yes, it certainly had.

THE COURT: What rights are those?

THE WITNESS: The rights to sell the records once Apple delivered them.

Q Quoting from page 92 of Playboy, first column -- and, incidentally, if you did not say this, Mr. Klein, I hope you will tell me:

"Playboy: Short of destrying a man that way would you do literally anything to accomplish what you felt you had to do for a client?

"Klein: Yes, I think so.

"Playboy: Would you lie?

"Klein: Oh, sure.

"Playboy: Would you steal?

"Klein: Probably. Look, you have to survive You do whatever it takes, because if you don't stay alive in business you can't help anybody. And then

all the discussions about ethics and morals don't mean a thing."

Do you remember saying that?

A I remember trying to get it changed.

Q Did you say it and then try to change it?

A No, they really took it out of context.

MR. PRETTYMAN: That is all.

THE COURT: Mr. Bergen.

CROSS EXAMINATION

BY MR. BERGEN:

Q Mr. Klein, going back to the conversation you had with Mr. Bennett -- by the way, I represent Mr. Lennon and Mr. Seider -- the conversation you had with Mr. Bennett, do you recall testifying about that conversation at your deposition at page 100:

"I just got the impression that something was going to happen or might happen?"

Do you recall that?

A Those exact words, no, but if that is what I said.

THE COURT: Who is Bennett?

MR. BERGEN: He testified earlier Mr. Bennett had told him this.

THE COURT: Yes.

Q Now, going back also to the conversation you had with Mr. Lennon, where I believe you said you told Mr. Lennon that Morris Levy had called and asked for a rate, a license on a tune, he told you, "That's premature," do you recall Mr. Lennon saying during that same conversation, and quoting from your deposition, page 79, referring to Mr. Lennon, he said, "Why should I take it from Capitol."

Do you remember that?

A Yes, he certainly said that.

Q Now if we can just go back to the sequence of events that started when you received or Mr. Silver received a telephone call from somebody at Capital asking as to a rate, do you recall what day that was?

A No. Mr. Silver does, and if he came in and gave you a date, that is the date he gave me.

Q I want to refer to your testimony at page 71 --

THE COURT: Mr. Silver is someone at Capitol?

THE WITNESS: He is an Abkco employee in charge of the music publishing.

THE COURT: Silver received a call from Capitol?

THE WITNESS: Yes.

Q I believe you testified on page 71 of your deposition that you talked to Mr. Levy on January 29, and then you said, "The day before, I received or Joel Silver

from my office received, a call from Capitol requesting a license for a John Lennon album on the tune Bring It On Home To Me."

A Yes, the call from Capitol to Mr. Silver was on the 28th, the day before, or be fore.

Q And then you said on page 71:

"The following day a phone call came in from Morris Levy. I assume -- I guess incorrectly, that what he was calling about was my agreement to give a rate."

That would be the 29th?

A Yes. The Levy date I am sure.

THE COURT: The Levy date you are sure?

THE WITNESS: Yes, I checked yesterday, I looked at my log.

THE COURT: That date is what?

THE WITNESS: Thw 29th of January.

THE COURT: And that is the date of the conversation which you described where he called you and asked you about the prior 1973 conversation and hung up quickly?

THE WITNESS: That is correct.

Q Do you recall when that conversation was, the first call that you got from Mr. Levy on the morning of the 29th?

A No, unfortunately my telephone logs only log those phone calls that come in that I don't answer, and I looked at it yesterday and it was 10.45 is when the call came in from Mr. Levy, when I was not there. There is a line through it, and I know that I called him back that day. I don't know what time.

Q You don't know what time you called him back?

A I know I got the call from Mr. Levy that I didn't take at 10.45 a.m.

Q And I believe you also testified that you called Mr. Lennon immediately after the call from Mr. Levy, I mean, the one where you spoke to Mr. Levy?

A Yes.

Q So that we get the sequence, Mr. Silver got the call on the 28th --

THE COURT: I have the sequence.

Q Did Mr. Lennon ever tell you that he was giving an album to Morris Levy?

A No.

Q Just so we are clear on this, in the conversation or one of the conversations you had with Mr. Levy on the 29th, did you tell Mr. Levy that he could sell and distribute this record album outside of North America without EMI's permission?

A No, I don't believe that Mr. Levy asked me that.

THE COURT: He was not asking you for any current advice at all, was he? He was just asking you as to what you said being in 1973?

THE WITNESS: That is exactly what happened.

THE COURT: He has not testified that Mr. Levy asked for any current advice.

Q Did you also tell Mr. Levy in that telephone conversation that the rights of Capitol were limited to the United States and Canada and not for retail outlets or fulfillment centers?

THE COURT: What is the question?

(Question read.)

THE WITNESS: I think you mean Apple.

Q I can do it quickly on your deposition.

You testified on page 97:

"Oh, God, probably in January. January, February, right after he informed me -- because he asked me to, in effect, reconfirm that I had said to him that Apple Records, Inc in New York had the rights. I told him my understanding, that they did, but that it was only for the United States and maybe Canada and certainly not for retail outlets, fulfillment

centers."

Do you recall telling Mr. Levy that?

A Yes, in one of those conversations, certainly.

THE COURT: I guess maybe I did not have the right sequence. There was the initial conversation where he simply called you up and confirmed what you said.

THE WITNESS: Yes.

THE COURT: Then did you immediately after that --

THE WITNESS: I then tried to call him back.

THE COURT: You called him back and then you asked why he had called you?

THE WITNESS: Correct.

THE COURT: And he explained and you testified about that. Was it after that that you called Lennon?

THE WITNESS: Yes.

THE COURT: Then you say that you had, oh, during the day and in subsequent days, several conversations with him?

THE WITNESS: That is correct.

THE COURT: Are you saying that in one of the conversations at some point you specifically said that in your view Apple had no rights for retail store sales and Apple had no rights for foreign sales?

THE WITNESS: Yes, I believe that the term fulfillment center as used in television sales had become a something which was being done, in other words, although they would advertise these packages on television, they would say "But you can buy them at Korvettes, Wooworth's," or whatever, and so that there would be no misund tanding about any conversations I had with him in 1973, wanted him to understand that there certainly was never any grant by EMI to Apple of mail order rights which could be sold through any retail outlet.

THE COURT: Would you have any memory of when it was you told him that? Was it in one of those first two onversations? Or don't you remember?

THE WITNESS: It was one or two days, it could have been the first, really, in-depth conversation. They all just seemed to run together.

THE COURT: Now, that first in-depth conversation was the one where you called back and asked the reason?

THE WITNESS: Correct.

THE COURT: But you are not sure?

THE WITNESS: No, the first in-depth conversation -- yes, you are correct. After I called him back and said, "What was the reason?" And I got certain information and I said, "Having this information I feel

constrained to call Mr. Menon and tell him. He is a close personal friend. And I want to tell him. Is it all right?"

THE COURT: That is what you would call the first in-depth conversation?

THE WITNESS: Yes, but I am not sure that I spoke to him about fulfillment in that one or the phone conversation after. It could have been the same day or the day after.

THE COURT: I understand.

BY MR. BERGEN:

Q What was the information you got from Mr. Levy in this telephone conversation?

A They would all run together. So it is really hard for me.

Q Tell us your best recollection, please?

A I can't separate them. One, that he was going to put out an album, that I know I got.

Q Did he say he was going to sell it in any retail fulfillment centers?

A In that first conversation I would think not.

Q How about the second conversation?

A I can't pinpoint it. I wish I could.

Q Did he say that at some point?

A I don't know whether he said it or whether I just wanted to make sure that he was aware and that he would not misinterpret my saying, "Yes, I indicated to you in 1973 that Apple Records New York had the rights as a blanket right to include all fulfillment centers."

I just wanted to be very specific about it.

Q One last question:

In your talking about Apple could unilaterally decide to put out an album, wasn't there a provision in the Apple-Capitol agreement having to do with processing and pressing of the record?

A Yes.

Q Doesn't that provision provide that all of the records will be pressed and processed by Capitol, except for the movie sound track which is covered by Article 3, Section 1 and the club records in Article 4?

I think I can refer you to the specific provision. Here it is. I am referring to Paragraph 1 of Article 2.

A It appears the only thing they are excluding is the motion picture sound track.

Q And the club records? Isn't that correct?

A Club, but, unfortunately, not mail order. Yes, you are right.

THE COURT: Let me see where we are.

Are you saying that you interpret the agreement to provide that all records will be pressed by Capitol, except for one, motion picture track albums? Is that right?

THE WITNESS: And, two, the distribution by direct mail to consumer, although they in Article 4, Paragraph 1, the club rights for manufacture are then reserved.

BY MR. BERGEN:

Q My question was, does Article 2, which covers pressing, provided all records will be processed and pressed by Capitol, except for the motion picture yrack in Article 3?

THE COURT: Let me just interrupt. We can all read the agreement. The only reason that we are interested in this witness' testimony on interpretation is if he can enlighten us from his background and in negotiation, but to have him just sit and read the agreement and have him put it together --

MR. BERGEN: No further questions.

THE COURT: Mr. Grumbach?

CROSS EXAMINATION

BY MR. GRUMBACH:

Q Mr. Klein, in your suits against Mr. Lennon personally and against Apple Records, Inc., are the damages that you claim in excess of $35 million?

A I think I testified $24 million-plus.

Q Plus 10 million? Did you spend over $800,000 in that litigation during the last fiscal year of your company?

A Yes.

MR. SCHURTMAN: I object.

THE COURT: Somebody asked him about his litigation.

Q Is the net worth of Abkco as of its last 10-K $4,700,000?

MR. SCHURTMAN: I object.

Q Is that right?

A I don't know. If you say so.

THE COURT: What are we leading up to?

MR. GRUMBACH: I have one more question and we will make it clear.

Q And of that amount, Mr. Klein, is it not true that $4,158,281 of the net worth of Abkco is in claims to rights from The Beetles?

A No, Mr. Schurtman --

Q I am Mr. Grumbach. That is not correct?

THE WITNESS: May I explain, your Honor?

THE COURT: No.

Q With reference to Exhibit C-2, if a record is taken by EMI, a master, does the right to distribute this record through normal retail channels automatically flow to Capitol through Apple?

A If Apple delivers the album for normal distribution to Capitol, yes.

Q Does Apple have the right not to deliver this album and yet put it out through mail order or does the album if it goes through mail order also go to Capitol?

A Are you asking for my interpretation?

Q I am asking what the agreement provides.

MR. SCHURTMAN: Your Honor, I object.

THE COURT: What agreement are you talking about?

MR. GRUMBACH: The Apple-Capitol agreement.

THE COURT: We have it and we do not need to have the witness describe it.

Q Isn't it true, Mr. Klein, that if Apple were to give under your theory unilateral mail order rights to Big Seven, that Capitol would also have the right to put that record out through normal retail channels if it wished?

A No, only if Apple delivered it to Capitol.

Q When you say delivered it, do you mean physically?

A Yes, I mean physically.

Q Where would Apple get that item it delivers to Capitol?

A From EMI.

Q So if Apple were to give anything to Big Seven, what it gave to Big Seven would have to physically come from EMI?

THE COURT: He just said that.

MR. GRUMBACH: No, he didn't, your Honor.

Q Is that true, Mr. Klein?

A On a pure technical basis, yes.

Q Well, isn't that exactly the parallel of what you said just before with reference to Apple giving to Capitol?

A No, it is not. That happened on a purely factual basis.

Q Doesn't the agreement provide, Mr. Klein, that the master belongs to EMI and EMI gives the master to Apple and then Apple takes the master it got from EMI and under your theory unilaterally can give it to Big Seven or it can give it to Capitol? Is that correct?

A With regard to mail order?

Q With regard to any masters.

THE COURT: We are just getting confused.

I think what the witness' position is, that if the distribution is to be a mail order distribution, Apple can confer that right directly to some other party besides Capitol to make that distribution.

Right?

THE WITNESS: Correct, or do it itself.

THE COURT: And if that is to be the only distribution, then it does not have to give any rights to Capitol.

Isn't that right?

THE WITNESS: That is absolutely correct.

THE COURT: Now, as far as the physical things, I thought we heard a few minutes ago that the pressing was to be by Capitol.

THE WITNESS: Correct.

THE COURT: So physically would it not be true that Apple would have to get the master or whatever the record is going to be made from, they would have to get it down to Capitol to do the pressing?

THE WITNESS: Certainly.

THE COURT: But they would have a right to get

those records delivered, according to your testimony, to whoever was going to do the mail order distribution?

THE WITNESS: That is correct.

THE COURT: And Capitol could not siphon off some of the records and do a retail distribution?

THE WITNESS: No, that is correct.

Q Let us go back one step, please.

The master that would be used to press records is owned by EMI?

A I am sorry. That is not correct. You are running things together. You are running the word master to be synonymous with that piece of plate that stamps out records.

Q I am talking about the master recording.

Which is embodied on a tape, correct? Who owns that?

A EMI.

Q And whatever Apple has which it is entitled to deliver to Capitol, or in the case of mail order under your theory to give to Big Seven or another mail order company, must come from EMI? Is that correct?

A That is correct.

Q So that if EMI did not have it and did not give it to Apple, then Apple would not be entitled to give it to

either Big Seven or Capitol? Is that right?

A You mean didn't ave the right? That is absolutely correct.

MR. GRUMBACH: I have no other questions.

THE COURT: Mr. Schurtman, do you have any questions?

MR. SCHURTMAN: I have two or three.

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REDIRECT EXAMINATION

BY MR. SCHURTMAN:

Q On that last point, if the master tapes are mae in the United States by Mr. Lennon or some other Beetle, how do they then get to EMI so they can come back to Apple to do with whatever it wants to under the agreement?

A That is what I was trying to explain between the pure technical way the agreement was supposed to operate and the practical way it did. If Mr. Lennon made his recordings in the United States and the master tapes were here, he might keep the original masters here and make a duplicate set and send it to EMI, who would then make duplicates and send them to their licensees throughout the world.

Q In 1969 were there any mail order operations for records other than record clubs in existence?

A I don't know. I would be guessing.

Q Let me ask you, for example, did Longines run a mail order house before it bought a mail order club?

MR. GRUMBACH: Your Honor, if he is going to guess again, I will object.

MR. SCHURTMAN: Let him answer.

MR. GRUMBACH: He said he would be guessing if he answered.

THE COURT: I am not interested in guesses. Do you have any knowledge?

A I knew that Longine was in business before it bought the Capitol Record Coub, certainly.

Q Do you have any economic or personal incentive, Mr. Klein, to lie in favor of the plaintiffs or Mr. Levy in this case?

A No.

MR. PRETTYMAN: I object, your Honor.

MR. SCHURTMAN: It was brought up by you.

THE COURT: Overruled.

A No, I don't.

Q If Mr. Levy wins this case or if his companies

win this case do you get anything out of it?

A No, I probably lose, because it will be less money for Mr. Lennon in case I prevail in the other case.

Q One last question. Under the EMI-Apple agreement -- that is Exhibit D -- what payments are to be made to EMI?

A Under the license agreement?

Q Yes.

A There is a separate agreement between Capitol and EMI. Capitol paid EMI a pressing fee, I believe. There is a license which accompanies all of these agreements, which really became operative at the same time. The amount of the royalty or the pressing fee to EMI was left blank. So I don't know what they were paying.

Q But I take it that in no event would Apple make any payments to EMI.

A You say no events, but that is not -- something do occur. Although there was no provision for it, when the motion picture sound track album was released Apple undertook to provide a royalty directly to EMI, and a-so provided that Capitol would manufacture the records even though they didn't have the rights.

Q But that was a special deal on the motion picture?

A That was a separate negotiation which we made.

MR. SCHURTMAN: I have no further questions.

THE COURT: All right. Anything further?

MR. PRETTYMAN: No. I wanted to bring up something else.

THE COURT: All right. You may step down. Thank you very much, Mr. Klein.

THE WITNESS: Thank you.

(Witness excused.)

MR. PRETTYMAN: Your Honor, I have a special problem in regard to my witnesses.

THE COURT: I am sure you do.

MR. PRETTYMAN: Could I just mention it?

THE COURT: Yes.

MR. PRETTYMAN: Under the agreement that we suggested during the beginning of the day, I would assume that we would proceed with Mr. Levy's and Mr. Seider's cross examination so as to finish up the October 8th meeting.

As you also know, I have Mr. Menon and Mr. Coury here from Los Angeles. I am just looking for some resolution as to where I should send them back to Los Angeles or keep them here.

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I honestly do anticipate that while we certainly do not want to take advantage of the situation regarding Mr. Levy's cross examination, your Honor must understand that he was on the stand for quite a long time, he has testified to a lot of things, and it is extremely important to us in cross examining him to make sure your Honor understands quite a number of points in relation to the October 8th meeting and others.

THE COURT: Look, I have no doubt that there is some important cross of all of these witnesses by the different lawyers.

Now, I am sorry. I know that we agreed with Mr. Lennon and Mr. Coury to have them on today, but I think it was helpful to have Mr. Klein on.

MR. PRETTYMAN: I am not complaining, your Honor. I am just looking for direction.

THE COURT: I just feel that tomorrow -- it makes absolutely no difference to me how disjointed the thing seems to be. It is all in the record.

If you wish to continue the cross examination of Mr. Levy the first thing, you can do it. If you wish to put your witnesses on the first thing, you can do that. In fact, we could go a little while longer tonight, but I don't think that is going to serve a lot of purpose.

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MR. PRETTYMAN: I don't either.

THE COURT: Because I don't think anybody could be finished tonight. So it is entirely up to you.

You want to go ahead with Mr. Coury and Mr. Menon first thing tomorrow?

MR. PRETTYMAN: I will just have to speak to them and we will work it out. I really think the other suggestion of finishing up and making a motion might expedite things a lot more than anything else.

THE COURT: Look, Mr. Schurtman, I want to be clear what you claim this contract consisted of. We have gotten -- as we go farther we get more and more information on the possible differentiation between the status of US mail order rights, US retail store rights and foreign rights of all kinds, and we have the position more clearly outlined all the time of EMI and Capitol.

Now, I know there are issues all the way through and I am not trying to summarize it, but at this point I really want to know what Mr. Levy or what the plaintiffs claim was the contract which was made. What was it?

MR. SCHURTMAN: The contract was the following, your Honor: That the old settlement agreement which we claim had been breached would be replaced by the following agreement:

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An agreement that Mr. Lennon would complete the oldies album with the assistance of Mr. Levy and Mr. Levy's companies, which was an agreement initially between Big Seven and Lennon and Apple; that the oldies album would be completed; that Mr. Lennon would record 15 or 16 songs, including some of the Spector tapes if they could be salvalged; that the album to be recorded by Mr. Lennon would then be promoted by one of Mr. Levy's companies, and Adam VIII was specifically mentioned, over television.

There was a discussion on that point as --

THE COURT: No, no. You tell me what the agreement was.

MR. SCHURTMAN: I am trying to tell you that.

THE COURT: Not what the discussion was; what the agreement was.

MR. SCHURTMAN: The agreement was that as to mail order rights in the United States EMI consent was not necessary and that Mr. Lennon and Mr. Apple could give --

THE COURT: Wait a minute.

MR.SCHURTMAN: That was the agreement.

THE COURT: That isn't an agreement. That is a representation.

MR. SCHURTMAN: All right.

THE COURT: I am being very careful to ask you

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was the agreement for Mr. Levy to distribute this through mail order, through retail fulfillment centers, US, Foreign or what? What was the agreement?

MR. SCHURTMAN: The agreement was that Mr. Levy's company would promote these records over television by mail order in the United States.

It was also agreed that if EMI consent could be obtained then they would also distribute it, Mr. Levy's company would distribute it, through retail fulfillment centers and/or abroad.

That was the agreement on that point.

THE COURT: All right. What were the other terms of the agreement?

MR. SCHURTMAN: The other terms of the agreement were that this would be a package for a single television promotion. The parties didnot agree on any specific length of time. They simply said one TV promotion.

The parties agreed that Mr. Lennon would work together with Mr. Levy's companies in making the album, in working out the cover, in working out the advertising, the TV commercials, and so forth.

Another term of the agreement was that while the TV promotion was in progress nobody else would sell it

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in retail, that it would be exclusive while the TV promotion was in progress.

The parties agreed that the albums would sell at a retail price of $4.98 and that the tapes would sell at a retail price of $5.98. I mean 8-track tapes.

The parties agreed that Mr. Lennon would pay for the recording costs and the musicians costs, and when I say Mr. Lennon, he would work out with Apple and the other companies who would pay what, but this would not be Mr. Levy's responsibility, and that Mr. Levy's company would pay for the pressing, packaging, television commercials and fulfillment, in other words, getting the records to the customers.

It was agreed that Mr. Levy's companies would pay a royalty of 12 percent of the retail price to Lennon and Apple and that out of the 12 percent Mr. Lennon would see to it that Mr. Spector was taken care of and that any other royalties that had to be paid other than copyright royalties would be paid out of that 12 percent. Copyright royalties were to be paid by Mr. Levy's company.

I believe, your Honor, unless I have inadvertently omitted something, this covers the essential terms of the agreement.

All right. Now look --

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MR. GRUMBACH: Your Honor --

MR.BERGEN: Your Honor, may we be heard just for a moment?

THE COURT: Just a moment. Just a moment.

There are just lots of questions that come to mind. One is, Mr. Schurtman, there is a serious question in my mind as to whether I could -- you know, it would be reasonable to find or assume that there would be this contract covering mail order only, but leaving in abeyance, so to speak, the distribution through retail fulfillment centers.

Now, I thought -- maybe I am mistaken -- but I thought that the testimony was that the mail order is not the biggest part of the sales through one of these TV promotions, that the biggest part is expected to be through the retail stores. That is because people don't like to mail in, they are lethargic, and they don't put stuff into the mail, and so they like to walk into Korvetts and Woolworths, and that is where the big sales are.

In other words, to tell me that this was a contract simply to have a TV mail order, leaving in abeyance for let us call it an amendment or further contracting the situation about the retail fulfillment centers, to say that I am supposed to find that rather than to simply

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say that I am supposed to find that therewas an incomplete, you know, a proposal there under discussion to be completed later, it seems to me is asking a lot.

MR. SCHURTMAN: Your Honor, may I respectfully suggest that your recollection isn't quite accurate on the point.

THE COURT: It may not be.

MR. SCHURTMAN:Mr. Levy testified that his company, Adam VIII, can do either mail order or retail fulfillment centers or both. He testified that he anticipated -- I can't remember the exact figure, but it was in excess of 1 million records in sales by mail order alone. It may have been 2 million. I have to look at the testimony.

THE COURT: What was the 3 to 5 million figure?

MR. SCHURTMAN: That would have included retail fulfillment centers and foreign.

I think what may have confused the issue is when the vice president of K-Tel testified, Mr. Kives, he testified that his company does primarily retail fulfillment centers, and he explained why.

On the other hand,Mr. Levy has already testified, and if necessary he will repeat his testimony, that his company does both, that he has on occasion done TV mail order campaigns without going into retail fulfillment

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centers at all.

THE COURT: Would they make a contract that night in that one discussion where they say "Okay, we will make a firm contract. We don't know the situation about the retail fulfillment centers. We don't have the consent of EMI for foreign rights andhave got to go to London on that. But we will still make a contract for you to -- even though we don't know about retail fulfillment and we don't know about foreign rights, we will still make a contract for as much as we think we know about, and that is the mail order."

MR. SCHURTMAN: There is nothing unusual about that, your Honor. We do it all --

THE COURT: And who is to do the pressing?

MR. SCHURTMAN: On the pressing, Mr. Levy has indicated that he would have given the pressing rights to Capitol if ultimately it would have worked out.

THE COURT: Was that worked out that night?

MR. SCHURTMAN: Pardon?

THE COURT: Was it decided? What did they agree that night?

MR. SCHURTMAN: I don't think -- I have to look at the testimony. My recollection is that they did not specifically discuss who would do the pressing. I may

be wrong on that.

THE COURT: Isn't that some -- I think that Mr. Levy has testified that they discussed the pressing and he said he would do the pressing.

Now, he couldn't do that pressing.

MR. SCHURTMAN: No, he would pay for the pressing. He doesn't do any pressing at all. Mr. Levy has testified that on occasion he has had Capitol press records for him. So that would not be at all unusual.

But let me point out on the pressing rights --

THE COURT: Is pressing such a standard cost that you can agree on that --

MR. SCHURTMAN: Yes, it is.

THE COURT: In other words, it is all standard, he could say what Capitol would charge him.

MR. SCHURTMAN: Pressing is essentially a standard cost in the industry, and Mr. Levy agreed that his companies would pay for it.

I think what has happened is that the defendants today fell back on the pressing clause in the agreement and that is the first time they have raised it and I suggest that if Capitol feels aggrieved that it did not get the pressing of the record it has specific remedies, but that does not invalidate the agreement.

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THE COURT: The question is was there e ugh agreed upon that night, even according to Mr. Levy's testimony, and I will ignore the defense testimony now, because I have been trying to go over the Levy testimony, and I just want to know even under that testimony what the alleged contract would be and whether there is enough there to constitute a contract.

I must say to you I am puzzled about the absence of any resolution about the retail fulfillment or the foreign rights, particularly the retail fulfillment.

MR. SCHURTMAN: They simply left that point open, your Honor.

THE COURT: How much money was John Lennon goingto make from giving Mr. Levy nothing but the mail order rights?

MR. SCHURTMAN: The mail order rights? Let me suggest --

THE COURT: Or how much was anybody going to make just from mail order rights?

MR. SCHURTMAN: Let's think about it for a minute. If 1 million records were sold that would be $5 million, of which Mr. Lennon would get 12 percent. I suggest that that is not an insubstantial sum.

MR. PRETTYMAN: 12 percent?

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MR. SCHURTMAN: It is over a million dollars.

MR. PRETTYMAN: 12 percent minus --

THE COURT: Wait a minute. Where is the basis for the 1 million, the 1 million figure?

MR. SCHURTMAN: Mr. Levy testified -- I am speaking from recollection now, as I would have to look at his specific testimony -- that through mail order alone, leaving aise retail fulfillment, leaving aside foreign rights, he would have sold in excess of a million records.

MR. BERGEN He testified it was a couple of million and on his deposition he said it was 2 million.

MR. SCHURTMAN: I am saying in excess of a million.

MR. BERGEN: We are playing very fast and loose with the testimony.

MR. SCHURTMAN: I think your testimony is a little better than mine, Mr. Bergen. I will rely on the record, as soon as I have had a chance to read it.

THE COURT: I think overnight you better -- what I would appreciate is getting a memo. You probably have this testimony digested. I am sure you have been digesting it all along. But I would just like to get a list of references so I am sure that I will cover this phase. I would like to get a list of references to all the

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testimony about the October 8th meeting and then I would like to get a list of references to all conversations, whether at the October 8th meeting or not, about this question of the rights, so to speak,the conversations about getting permission, calling Len Wood, going to England, who had the rights, giving rights, and so forth.

MR. SCHURTMAN: Of all witnesses?

THE COURT: Of all witnesses. I assume you have been digesting it. I don't need a digest,but I would just like to have the references so I can turn quickly in the testimony.

MR. SCHURTMAN: We will do as much as we can.

THE COURT: Okay.

MR. BERGEN: Your Honor, may I be heard just briefly? Very briefly, I promise, your Honor.

MR. SCHURTMAN: Can I just finish what I was saying before and leave you with one last thought on the oral agreement.

THE COURT: Yes.

MR. SCHURTMAN: That is that when the parties made the deal they did discuss the fact, or they discussed it subsequently, that at some point it would be put into writing. Nobody ever contemplated that this would be an

oral agreement for alltimes. But I suggest to you there is a distinction in the law, and we can brief it, I think we have briefed it, between an agreement, an oral agreement which says this shall not be an agreement until it is reduced to writing, and an oral agreement which says we now have a deal and at some convenient point we are going to put it into writing.

Our position is that we had the latter category, that the parties did intend at some point to put it into writing, and Mr. Levy will explain, has explained what the delay was in putting it into writing.

THE COURT:Of course, I agree with you there is a legal proposition. There is no question. But the question is really was this a situation where the delay, if you want to call it that, in putting it into writing was because the terms of the contract had not been sufficiently agreed on, or is it a situation where the terms had been agreed on, but you are just waiting for diplomatic reasons not to put it in?

MR. SCHURTMAN: That is an issue for you to decide, your Honor.

THE COURT: Right.

MR. SCHURTMAN: But if in fact you accept our position that there was a delay in putting the thing

into writing, then I suggest to you that once it had been put into writing all the usual boiler plate would probably and presumably have been included, because a lot of these clauses that you find in the agreement, 90 percent are pure boilerplate. They put them in over and over again. I mean, the clause on accounting, for example, I think one witness --

THE COURT: I haven't been questioning you on accounting. I hope I am not talking about boiler plate here, because I know what you are talking about. But the thing about the retail fulfillment, whether Mr. Levy is going to have a right to market through retail stores, that obviously isn't boiler plate.

MR. SCHURTMAN: No, that is an important issue.

THE COURT: I am not trying to talk about boiler plate.

Okay. Mr. Bergen.

MR. BERGEN: Your Honor, this is the first time the defendants have heard since this case started a year ago that the alleged contract, the alleged oral contract, was one for mail order rights in the United States and then if EMI's permission would be obtained then they would go on to something else.

It is also the first time that the defendants

have been told that this was a package for a single TV promotion and that the parties did not agree to any specific period of time.

The complaint in this action alleges -- I just want to read the one paragraph -- "In or about October 1974 Lennon, individually and on behalf of Apple, agreed that the October 1973 settlement would be modified to provide that Lennon would record approximately 15 rock and roll songs, including several songs previously recorded under the production of one Phil Spector, which would be sold as a record and tape under the title rights by Big Seven or its assignee on a worldwide basis through mail orders and retail fulfillment centers by means of television merchandising."

That is what Mr. Levy's January 9, 1975 letter to Mr. Dolgenos says. We have asked the plaintiffs in a demand for a bill of particulars in the State Court, interrogatories --

THE COURT: Let me see the letter. Can I see the letter?

MR. GRUMBACH: It is 31.

MR. BERGEN: Every time we have asked them what the agreement was they have given us a Chinese copy word for word of the allegation of the complaint.

THE COURT: When did you ask?

MR. BERGEN: We asked in February in a demand for a bill of particulars. We asked in interrogatories that were received by Apple Records.

MR. PRETTYMAN:And Mr. Levy's deposition testimony--

THE COURT: Wait a minute. Just one at a time.

Look, I would appreciate -- I haven't gone through all that discovery, to say the least, and I think I should get, and you can work it out with Mr. Schurtman, because I want it complete, but I would like to have tomorrow morning, in addition to the materials I asked for a minute ago, I would like to have Xerox copies of -- well, you can start with the complaint paragraph, but I want to have Xerox copies of any demand for bill of particulars or interrogatory asking for the nature of the contract and I would like to have the answer to it and then any deposition testimony.

I am not so worried about the worm, but I have a file in there, you know, two feet thick. You can take the Court file or whatever you want to do, but if I could just have before me in some conveneint form that material. It can be either Xerox copies or whatever. I don't care.

MR. BERGEN: I would also like to add just

one thing on the last point that Mr. Schurtman said. In Mr. Levy's deposition he testified, and I quote:

"Q At the conclusion of that meeting did you anticipate that the deal which you felt you had reached would be reduced to writing at a subsequent date?

"A Not really, no."

THE COURT: Okay. You talk about the presentation of witnesses. As I said, I am willing to have Mr. Coury and Mr. Lennon go on, but I do want to come to grips, and I think without any short-shrifting of anybody we can, fairly promptly now, come to grips with this question of whether there was an agreement or not. I will hear all the evidence that is necessary on both sides on that point, but I want to -- I think we are zeroing in on that and I think we can continue and get some resolution of this problem.

See you --

MR. PRETTYMAN: Your Honor, just so everybody will be on notice, I think in the light of this development that we will postpone Mr. Menon's and Mr. Coury's testimony.

THE COURT: Okay.

(Adjourned to Wednesday, January 28, 1976, at 10:00 a.m.)

United States Court of Appeals
For the Second Circuit

Big Seven Music Corp. and Adam VIII, LTD.,
Plaintiffs-Appellants,

against

John Lennon, Apple Records, Inc., Harold Seider,
Capitol Records, Inc. and EMI Records Limited,
Defendants-Appellees,

and

Morris Levy,
Additional Defendant on Counterclaim-Appellant.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Jerry N. Simmons, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 25 Elliott Place Bronx, N.Y. 10452

That on Nov. 19, 1976, he served

One Appendix Volume 1-6 and one Exhibit Volume and two Briefs on behalf of Plaintiffs-Appellants and Additional Defendant on Counterclaim-Appellant.

On:
Marshall Bratter Greene Allison & Tucker, Esqs.
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by delivering to and leaving same with a proper person or persons in charge of the office or offices at the above address or addresses during the usual business hours of said day.

.....

Sworn to before me this
19 day of November, 1976